

ESTTA Tracking number: **ESTTA234854**

Filing date: **09/05/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92048260
Party	Plaintiff i play. inc.
Correspondence Address	Steven C. Schnedler Carter & Schnedler, P.A. P.O. Box 2985 Asheville, NC 28802 UNITED STATES schnedler@ashevillepatent.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Steven C. Schnedler
Filer's e-mail	schnedler@ashevillepatent.com
Signature	/Steven C. Schnedler/
Date	09/05/2008
Attachments	Notice of Reliance.pdf (3 pages)(62507 bytes) Serial No. 78791447 Part I.pdf (39 pages)(4806127 bytes) Serial No. 78791447 Part II.pdf (38 pages)(11302668 bytes) Serial No. 78791467 Part I.pdf (37 pages)(4684217 bytes) Serial No. 78791467 Part II.pdf (37 pages)(11312560 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

i play. inc. (change of name)	
from FAMILY CLUBHOUSE,)	
INCORPORATED d/b/a i play),)	
a North Carolina corporation,)	
)	Cancellation No. 92048260
Cancellation)	
Petitioner,)	
)	
v.)	Registration No. 2,923,675
)	International Class 28
INTERNATIONAL PLAYTHINGS, INC.,)	
substituted as party defendant)	
for IPI Acquisition Corporation,)	
)	
Registrant.)	

Asheville, North Carolina
September 5, 2008

NOTICE OF RELIANCE

Pursuant to 37 CFR § 2.122(e), Cancellation Petitioner i play. inc. intends to rely upon, as evidence, the following official records of the Patent and Trademark Office:

- The file of application Ser. No. 78/791,447
- The file of application Ser. No. 78/791,467

Copies are submitted herewith.

Application Ser. Nos. 78/791,447 and 78/791,467 are owned by Cancellation Petitioner i play. inc., and are for registration of I PLAY. (and design) and of I PLAY., respectively.

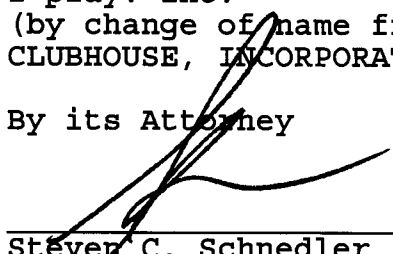
Cancellation No. 92048260

Pages to be read include the Office Actions mailed July 10, 2006 and April 26, 2007. The Office Actions mailed July 10, 2006 include printouts from Internet websites evidencing that "the applicant and registrant's goods are sold in the same retail stores."

Respectfully submitted,

i play. inc.
(by change of name from FAMILY
CLUBHOUSE, INCORPORATED d/b/a i play)

By its Attorney



Steven C. Schnedler

Carter & Schnedler, P.A.
56 Central Avenue, Suite 101 (28801)
P.O. Box 2985
Asheville, NC 28802
Telephone: (828) 252-6225
Email: schnedler@ashevillepatent.com

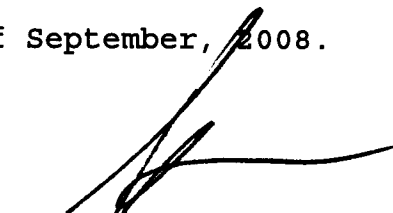
C:\Docs\IPLAY\Cancellation 92048260\Notice of Reliance.doc

CERTIFICATE OF SERVICE

I hereby certify that the paper titled NOTICE OF RELIANCE has been served upon Registrant's Attorney of Record by depositing a copy thereof in First Class Mail, postage prepaid and properly addressed as follows:

Paul H. Kochanski
Lerner David Littenberg Krumholz & Mentlik, LLP
600 South Avenue West, Suite 300
Westfield, NJ 07090

This, the 5th day of September, 2008.



Steven C. Schnedler
Attorney for Cancellation Petitioner

Carter & Schnedler, P.A.
56 Central Avenue, Suite 101 (28801)
P.O. Box 2985
Asheville, NC 28802
Telephone: (828) 252-6225
Email: schnedler@ashevillepatent.com

MARK: I PLAY.

78791447

CORRESPONDENT ADDRESS:

STEVEN C. SCHNEDLER
CARTER SCHNEDLER & MONTEITH, P.A.
PO BOX 2985
ASHEVILLE, NC 28802-2985

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Family Clubhouse, Incorporated

CORRESPONDENT'S REFERENCE/DOCKET NO:

IPLAY-1

CORRESPONDENT E-MAIL ADDRESS:

NOTICE OF SUSPENSION

ISSUE/MAILING DATE:

SUSPENSION PROCEDURE: This suspension notice serves to suspend action on the application for the reason(s) specified below. No response is needed. 37.C.F.R. §2.67. The Office will conduct periodic status checks to determine if suspension remains appropriate. Action on this application is suspended pending the disposition of:

- Cancellation of Cited Mark.

The proceeding(s) above pertains to one or more of the following: (1) a registration cited as a bar to applicant's registration under Section 2(d) of the Trademark Act, (2) a pending application(s) that could present a future bar to registration under Section 2(d) if it matured into a registration, and/or (3) the registrability of applicant's mark. 15 U.S.C. §1052. Therefore, action is suspended pending the final disposition of this proceeding(s). See 37 C.F.R. §2.83; TMEP §§716.02(a), (c) and (d), 1208 et seq. Any refusal(s) made under Section 2 is herein maintained.

The following refusal(s)/requirement(s) is/are continued and maintained:

- Trademark Act Section 2(d) Refusal to Register

/Laurie R. Kaufman/
Trademark Examining Attorney
Law Office 103
Phone: 571.272.8913
Fax: 571.273.8913

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

OVERVIEW

SERIAL NUMBER	78791447	FILING DATE	01/13/2006
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	KAUFMAN, LAURIE R	L.O. ASSIGNED	103

PUB INFORMATION

RUN DATE	10/18/2007		
PUB DATE	N/A		
STATUS	649-ACTION CONTINUING FINAL - MAILED		
STATUS DATE	10/04/2007		
LITERAL MARK ELEMENT	I PLAY.		
DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPub 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

FILING BASIS

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	YES	1 (a)	YES	1 (a)	NO
1 (b)	NO	1 (b)	NO	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

MARK DATA

STANDARD CHARACTER MARK	NO
LITERAL MARK ELEMENT	I PLAY.
MARK DRAWING CODE	3-AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/LETTER(S)/NUMBER(S)
COLOR DRAWING FLAG	NO

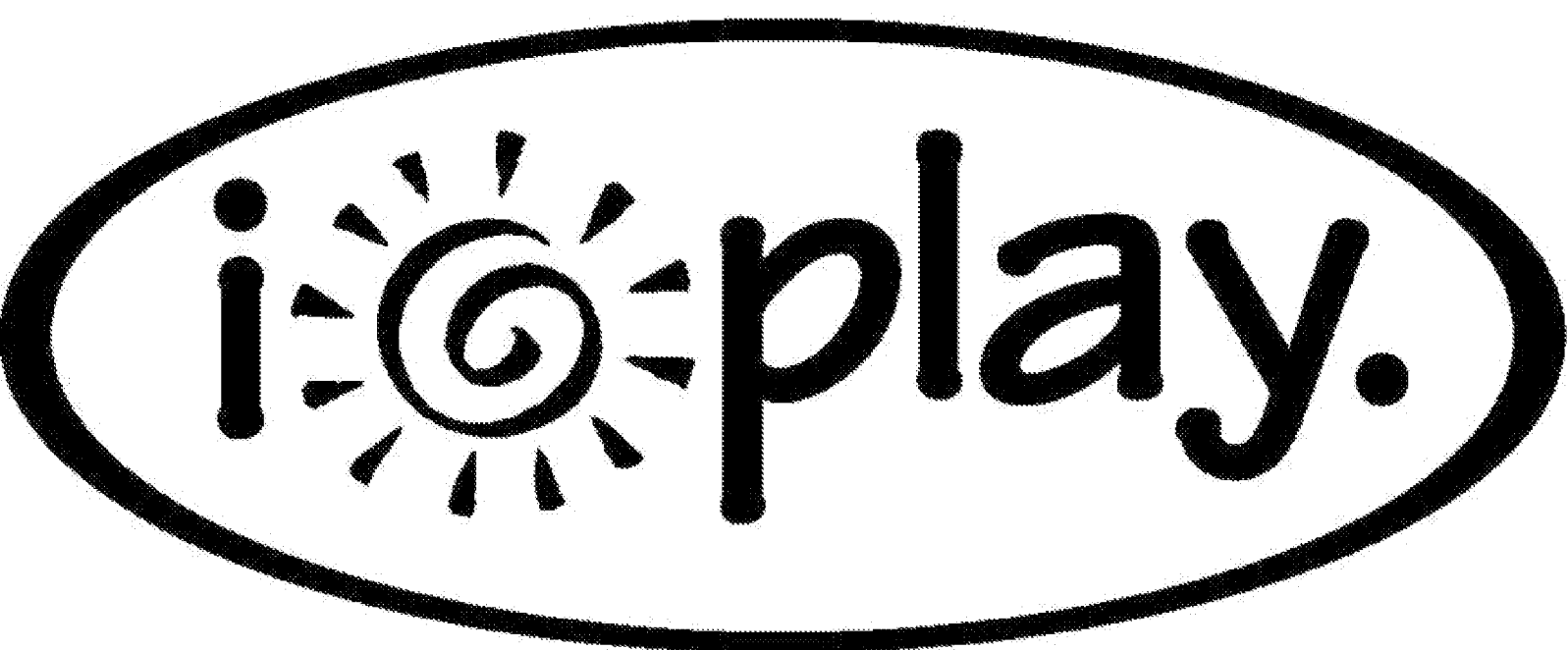
CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	Family Clubhouse, Incorporated
ADDRESS	2000 Riverside Drive, Unit 9 Asheville, NC 28804
ENTITY	03-CORPORATION
CITIZENSHIP	North Carolina
DBA/AKA	DBA i play

GOODS AND SERVICES

INTERNATIONAL CLASS	025
DESCRIPTION TEXT	Children's and infants' cloth bibs; children's headwear; infantwear; non-disposable swim diapers

				DATE			
MISCELLANEOUS INFORMATION/STATEMENTS							
CHANGE IN REGISTRATION				NO			
COLORS CLAIMED STATEMENT				Color is not claimed as a feature of the mark.			
PROSECUTION HISTORY							
DATE	ENT CD	ENT TYPE	DESCRIPTION				ENT NUM
10/17/2007	TEME	I	TEAS/EMAIL CORRESPONDENCE ENTERED				021
10/17/2007	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE				020
10/17/2007	ERFR	I	TEAS REQUEST FOR RECONSIDERATION RECEIVED				019
10/04/2007	CNCF	O	CONTINUATION OF FINAL REFUSAL MAILED				018
10/03/2007	CNCF	R	ACTION CONTINUING A FINAL - COMPLETED				017
09/13/2007	TEME	I	TEAS/EMAIL CORRESPONDENCE ENTERED				016
09/12/2007	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE				015
09/12/2007	ERFR	I	TEAS REQUEST FOR RECONSIDERATION RECEIVED				014
09/12/2007	ERFR	I	TEAS REQUEST FOR RECONSIDERATION RECEIVED				013
04/26/2007	CNFR	O	FINAL REFUSAL MAILED				012
04/25/2007	CNFR	R	FINAL REFUSAL WRITTEN				011
02/23/2007	ACEC	I	AMENDMENT FROM APPLICANT ENTERED				010
01/26/2007	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE				009
02/23/2007	ALIE	A	ASSIGNED TO LIE				008
01/26/2007	MAIL	I	PAPER RECEIVED				007
07/10/2006	CNRT	F	NON-FINAL ACTION MAILED				006
07/10/2006	CNRT	R	NON-FINAL ACTION WRITTEN				005
06/30/2006	DOCK	D	ASSIGNED TO EXAMINER				004
06/30/2006	DOCK	D	ASSIGNED TO EXAMINER				003
01/20/2006	MDSC	O	NOTICE OF DESIGN SEARCH CODE MAILED				002
01/19/2006	NWAP	I	NEW APPLICATION ENTERED IN TRAM				001
CURRENT CORRESPONDENCE INFORMATION							
ATTORNEY				Steven C. Schnedler			
CORRESPONDENCE ADDRESS				STEVEN C. SCHNEDLER CARTER SCHNEDLER & MONTEITH, P.A. PO BOX 2985 ASHEVILLE, NC 28802-2985			
DOMESTIC REPRESENTATIVE				NONE			



The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	78791447
LAW OFFICE ASSIGNED	LAW OFFICE 103
MARK SECTION (no change)	
ARGUMENT(S)	
<u>SUSPENSION REQUEST</u>	
In the Final Action mailed April 26, 2007, registration was refused under Trademark Act Section 2(d) on the asserted basis of likelihood of confusion with the mark of Registration No. 2,923,675. In an Office Action mailed October 4, 2007, the final refusal was continued.	
Accordingly, on October 16, 2007, applicant filed with the Trademark Trial and Appeal Board a petition to cancel Registration No. 2,923,675. The Electronic System for Trademark Trials and Appeals was employed for this filing, and tracking number ESTTA168936 was assigned.	
Accordingly, it is requested that proceedings in the subject application be suspended pending the outcome of the cancellation proceeding.	
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Steven C. Schnedler/
SIGNATORY'S NAME	Steven C. Schnedler
SIGNATORY'S POSITION	Attorney of record
DATE SIGNED	10/17/2007
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
FILING INFORMATION SECTION	
SUBMIT DATE	Wed Oct 17 11:09:04 EDT 2007
TEAS STAMP	USPTO/RFR-70.144.96.249-2 0071017110904985213-78791 447-400debfc86dd0dbd8554a debadcc7dea8b-N/A-N/A-200 71017110102971126

PTT Form 105a (Rev 01/2007)
USPTB Web, crsk-csk (http://www.uspto.gov)

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. **78791447** has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

SUSPENSION REQUEST

In the Final Action mailed April 26, 2007, registration was refused under Trademark Act Section 2(d) on the asserted basis of likelihood of confusion with the mark of Registration No. 2,923,675. In an Office Action mailed October 4, 2007, the final refusal was continued.

Accordingly, on October 16, 2007, applicant filed with the Trademark Trial and Appeal Board a petition to cancel Registration No. 2,923,675. The Electronic System for Trademark Trials and Appeals was employed for this filing, and tracking number ESTTA168936 was assigned.

Accordingly, it is requested that proceedings in the subject application be suspended pending the outcome of the cancellation proceeding.

Request for Reconsideration Signature

Signature: /Steven C. Schnedler/ Date: 10/17/2007

Signatory's Name: Steven C. Schnedler

Signatory's Position: Attorney of record

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 78791447

Internet Transmission Date: Wed Oct 17 11:09:04 EDT 2007

TEAS Stamp: USPTO/RFR-70.144.96.249-2007101711090498

5213-78791447-400debf86dd0dbd8554adebad

cc7dea8b-N/A-N/A-20071017110102971126

MARK: I PLAY.

78791447

CORRESPONDENT ADDRESS:

STEVEN C. SCHNEDLER
CARTER SCHNEDLER & MONTEITH, P.A.
PO BOX 2985
ASHEVILLE, NC 28802-2985

RESPOND TO THIS ACTION:

<http://www.uspto.gov/teas/eTEASpageD.htm>

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/main/trademarks.htm>

-

APPLICANT: Family Clubhouse, Incorporated

CORRESPONDENT'S REFERENCE/DOCKET NO:

IPLAY-1

CORRESPONDENT E-MAIL ADDRESS:

OFFICE ACTION

ISSUE/MAILING DATE:

The trademark examining attorney has carefully reviewed the request for reconsideration and is not persuaded by applicant's arguments. No new issue has been raised and no new compelling evidence has been presented with regard to the point(s) at issue in the final action. TMEP §715.03(a). Therefore, the request for reconsideration is **denied** and the final refusal is continued. 37 C.F.R. §2.64(b); TMEP §715.04.

The filing of a request for reconsideration does *not* extend the time for filing a proper response to the final action, which runs from the date the final action was mailed. 37 C.F.R. §2.64(b); TMEP §§715.03 and 715.03(c).

Consent Agreement Unacceptable – Naked Consent

The consent agreement submitted is considered a “naked consent” and thus is not acceptable to obviate a likelihood of confusion refusal because it does not set forth reasons why the parties believe there is no likelihood of confusion, nor does it set forth the arrangements undertaken by the parties to avoid confusing the public. *In re Permagrain Products, Inc.*, 223 USPQ 147 (TTAB 1984) (consent agreement found to be “naked” because the agreement did not restrict the markets in such a way as to avoid confusion). Moreover, registrant merely provides permission for applicant to *use the mark*, and does not provide consent to applicant to *register* the mark.

If applicant wishes to submit a proper consent agreement from the registrant consenting to the registration of the mark, this refusal will be reconsidered. Please note that consent agreements are but one factor to be taken into account with all of the other relevant circumstances bearing on the likelihood of confusion referred to in §2(d). *In re N.A.D. Inc.*, 754 F.2d 996, 224 USPQ 969, 971 (Fed. Cir. 1985); TMEP §1207.01(d)(viii).

Factors to be considered in weighing a consent agreement include: whether the agreement is unilateral or bilateral; whether the parties agree that no confusion exists; whether the trade channels of the respective goods are related and a statement indicating a clear indication of the respective, separate trade channels; whether the parties will make efforts to prevent confusion, and cooperate and take steps to avoid any confusion that may arise in the future; and whether the marks have been used for a period of time without evidence of actual confusion. *See In re Mastic*, 829 F.2d 1114, 1115, 4 USPQ2d 1292, 1294 (Fed. Cir. 1987) (relying on the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563 (C.C.P.A. 1973)).

Response

If the applicant has questions about its application or needs assistance in responding to this Office action, please telephone the assigned trademark examining attorney directly at the number below.

/Laurie R. Kaufman/
Trademark Examining Attorney
Law Office 103
Ph: 571.272.8913
Fx: 571.273.9103

RESPOND TO THIS ACTION: If there are any questions about the Office action, please contact the assigned examining attorney. A response to this Office action should be filed using the form available at <http://www.uspto.gov/teas/eTEASpageD.htm>. If notification of this

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

OVERVIEW

SERIAL NUMBER	78791447	FILING DATE	01/13/2006
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	KAUFMAN, LAURIE R	L.O. ASSIGNED	103

PUB INFORMATION

RUN DATE	09/14/2007		
PUB DATE	N/A		
STATUS	663-RESPONSE AFER FINAL REJECTION - ENTERED		
STATUS DATE	09/13/2007		
LITERAL MARK ELEMENT	I PLAY.		
DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPub 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

FILING BASIS

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	YES	1 (a)	YES	1 (a)	NO
1 (b)	NO	1 (b)	NO	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

MARK DATA

STANDARD CHARACTER MARK	NO
LITERAL MARK ELEMENT	I PLAY.
MARK DRAWING CODE	3-AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/LETTER(S)/NUMBER(S)
COLOR DRAWING FLAG	NO

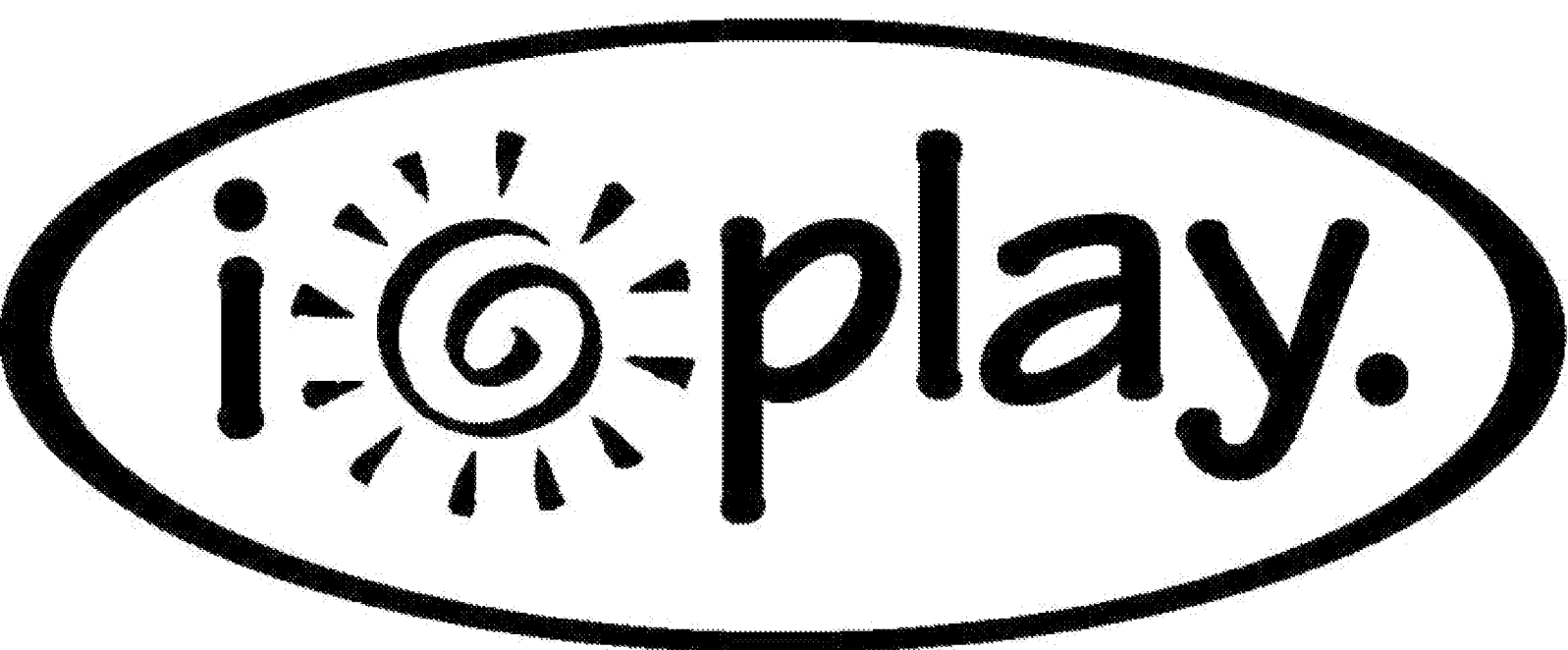
CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	Family Clubhouse, Incorporated
ADDRESS	2000 Riverside Drive, Unit 9 Asheville, NC 28804
ENTITY	03-CORPORATION
CITIZENSHIP	North Carolina
DBA/AKA	DBA i play

GOODS AND SERVICES

INTERNATIONAL CLASS	025
DESCRIPTION TEXT	Children's and infants' cloth bibs; children's headwear; infantwear; non-disposable swim diapers

				DATE			
MISCELLANEOUS INFORMATION/STATEMENTS							
CHANGE IN REGISTRATION				NO			
COLORS CLAIMED STATEMENT				Color is not claimed as a feature of the mark.			
PROSECUTION HISTORY							
DATE	ENT CD	ENT TYPE	DESCRIPTION				ENT NUM
09/13/2007	TEME	I	TEAS/EMAIL CORRESPONDENCE ENTERED				016
09/12/2007	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE				015
09/12/2007	ERFR	I	TEAS REQUEST FOR RECONSIDERATION RECEIVED				014
09/12/2007	ERFR	I	TEAS REQUEST FOR RECONSIDERATION RECEIVED				013
04/26/2007	CNFR	O	FINAL REFUSAL MAILED				012
04/25/2007	CNFR	R	FINAL REFUSAL WRITTEN				011
02/23/2007	ACEC	I	AMENDMENT FROM APPLICANT ENTERED				010
01/26/2007	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE				009
02/23/2007	ALIE	A	ASSIGNED TO LIE				008
01/26/2007	MAIL	I	PAPER RECEIVED				007
07/10/2006	CNRT	F	NON-FINAL ACTION MAILED				006
07/10/2006	CNRT	R	NON-FINAL ACTION WRITTEN				005
06/30/2006	DOCK	D	ASSIGNED TO EXAMINER				004
06/30/2006	DOCK	D	ASSIGNED TO EXAMINER				003
01/20/2006	MDSC	O	NOTICE OF DESIGN SEARCH CODE MAILED				002
01/19/2006	NWAP	I	NEW APPLICATION ENTERED IN TRAM				001
CURRENT CORRESPONDENCE INFORMATION							
ATTORNEY				Steven C. Schnedler			
CORRESPONDENCE ADDRESS				STEVEN C. SCHNEDLER CARTER SCHNEDLER & MONTEITH, P.A. PO BOX 2985 ASHEVILLE, NC 28802-2985			
DOMESTIC REPRESENTATIVE				NONE			



The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	78791447
LAW OFFICE ASSIGNED	LAW OFFICE 103
MARK SECTION (no change)	
ARGUMENT(S)	
<p>This is in response to the Final Action mailed April 26, 2007, which maintains the Section 2(d) refusal in view of Reg. No. 2,923,675, owned by International Playthings, Inc.</p> <p>In response, a "Trademark Co-Existence and Consent Agreement" has been entered into with the owner of Reg. No. 2,923,675. A copy is submitted herewith.</p> <p>The "Trademark Co-Existence and Consent Agreement" was carefully drafted in view of TMEP 1207.01(d)(viii), and the cases there cited, including <i>In re E. I. Du Pont de Nemours & Co.</i>, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). It is submitted that the Consent Agreement is well sufficient to overcome the Section 2(d) refusal.</p> <p>For the record, in the Office Action mailed April 26, 2007, the trademark examining attorney characterizes applicant's previous argument as follows: "Applicant argues that no likelihood of confusion exists between the proposed mark and cited mark because similar marks previously co-existed on the Principal Register." That is not exactly what applicant previously argued. Rather, applicant pointed out that, when the currently-cited Reg. No. 2,923,675 was a pending application, the examiner in that case did <u>not</u> find a likelihood of confusion in view of the current applicant's then-active earlier Reg. No. 2,115,786. It was requested that the Office apply a consistent standard. Applicant did not previously <u>argue</u> that no likelihood of confusion exists. In the event the current "Trademark Co-Existence and Consent Agreement" is not accepted by the trademark examining attorney as sufficient to overcome the Section 2(d) refusal in the subject application, applicant is not precluded from initiating a cancellation proceeding against Reg. No. 2,923,675.</p> <p>In view of the foregoing, it is requested that the subject application now be approved for publication.</p>	
EVIDENCE SECTION	
DESCRIPTION OF EVIDENCE FILE	"Trademark Co-Existence and Consent Agreement"
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Steven C. Schnedler/
SIGNATORY'S NAME	Steven C. Schnedler
SIGNATORY'S POSITION	Attorney of record
DATE SIGNED	09/12/2007
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
FILING INFORMATION SECTION	
SUBMIT DATE	Wed Sep 12 12:52:52 EDT 2007
TEAS STAMP	USPTO/RFR-74.227.205.92-2 0070912125252426716-78791 447-40023d412f7c53960845e bb55bc60a5efbd-N/A-N/A-20 070912124015166681

in response to the substantive refusal(s), please note the following.

This is in response to the Final Action mailed April 26, 2007, which maintains the Section 2(d) refusal in view of Reg. No. 2,923,675, owned by International Playthings, Inc.

In response, a "Trademark Co-Existence and Consent Agreement" has been entered into with the owner of Reg. No. 2,923,675. A copy is submitted herewith.

The "Trademark Co-Existence and Consent Agreement" was carefully drafted in view of TMEP 1207.01(d)(viii), and the cases there cited, including *In re E. I. Du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). It is submitted that the Consent Agreement is well sufficient to overcome the Section 2(d) refusal.

For the record, in the Office Action mailed April 26, 2007, the trademark examining attorney characterizes applicant's previous argument as follows: "Applicant argues that no likelihood of confusion exists between the proposed mark and cited mark because similar marks previously co-existed on the Principal Register." That is not exactly what applicant previously argued. Rather, applicant pointed out that, when the currently-cited Reg. No. 2,923,675 was a pending application, the examiner in that case did not find a likelihood of confusion in view of the current applicant's then-active earlier Reg. No. 2,115,786. It was requested that the Office apply a consistent standard. Applicant did not previously argue that no likelihood of confusion exists. In the event the current "Trademark Co-Existence and Consent Agreement" is not accepted by the trademark examining attorney as sufficient to overcome the Section 2(d) refusal in the subject application, applicant is not precluded from initiating a cancellation proceeding against Reg. No. 2,923,675.

In view of the foregoing, it is requested that the subject application now be approved for publication.

EVIDENCE

Evidence in the nature of "Trademark Co-Existence and Consent Agreement" has been attached.

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Steven C. Schnedler/ Date: 09/12/2007

Signatory's Name: Steven C. Schnedler

Signatory's Position: Attorney of record

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 78791447

Internet Transmission Date: Wed Sep 12 12:52:52 EDT 2007

TEAS Stamp: USPTO/RFR-74.227.205.92-2007091212525242

6716-78791447-40023d412f7c53960845ebb55b

c60a5efbd-N/A-N/A-20070912124015166681

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	78791447
LAW OFFICE ASSIGNED	LAW OFFICE 103
MARK SECTION (no change)	
ARGUMENT(S)	
<p>This is in response to the Final Action mailed April 26, 2007, which maintains the Section 2(d) refusal in view of Reg. No. 2,923,675, owned by International Playthings, Inc.</p> <p>In response, a "Trademark Co-Existence and Consent Agreement" has been entered into with the owner of Reg. No. 2,923,675. A copy is submitted herewith.</p> <p>The "Trademark Co-Existence and Consent Agreement" was carefully drafted in view of TMEP 1207.01(d)(viii), and the cases there cited, including <i>In re E. I. Du Pont de Nemours & Co.</i>, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). It is submitted that the Consent Agreement is well sufficient to overcome the Section 2(d) refusal.</p> <p>For the record, in the Office Action mailed April 26, 2007, the trademark examining attorney characterizes applicant's previous argument as follows: "Applicant argues that no likelihood of confusion exists between the proposed mark and cited mark because similar marks previously co-existed on the Principal Register." That is not exactly what applicant previously argued. Rather, applicant pointed out that, when the currently-cited Reg. No. 2,923,675 was a pending application, the examiner in that case did <u>not</u> find a likelihood of confusion in view of the current applicant's then-active earlier Reg. No. 2,115,786. It was requested that the Office apply a consistent standard. Applicant did not previously <u>argue</u> that no likelihood of confusion exists. In the event the current "Trademark Co-Existence and Consent Agreement" is not accepted by the trademark examining attorney as sufficient to overcome the Section 2(d) refusal in the subject application, applicant is not precluded from initiating a cancellation proceeding against Reg. No. 2,923,675.</p> <p>In view of the foregoing, it is requested that the subject application now be approved for publication.</p>	
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_7422720592-130138175_._IPLAY-1-2_Agreement.pdf
CONVERTED PDF FILE(S) (4 pages)	\\TICRS2\EXPORT14\787\914\78791447\xml1\RFR0002.JPG
	\\TICRS2\EXPORT14\787\914\78791447\xml1\RFR0003.JPG
	\\TICRS2\EXPORT14\787\914\78791447\xml1\RFR0004.JPG
	\\TICRS2\EXPORT14\787\914\78791447\xml1\RFR0005.JPG
DESCRIPTION OF EVIDENCE FILE	"Trademark Co-Existence and Consent Agreement"
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Steven C. Schnedler/
SIGNATORY'S NAME	Steven C. Schnedler
SIGNATORY'S POSITION	Attorney of record
DATE SIGNED	09/12/2007
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
FILING INFORMATION SECTION	
SUBMIT DATE	Wed Sep 12 13:09:59 EDT 2007
TEAS STAMP	USPTO/RFR-74.227.205.92-2 0070912130959654421-78791 447-4005ebca98633978f78df f38ba25aedbb-N/A-N/A-2007 0912130138175993

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. **78791447** has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

This is in response to the Final Action mailed April 26, 2007, which maintains the Section 2(d) refusal in view of Reg. No. 2,923,675, owned by International Playthings, Inc.

In response, a "Trademark Co-Existence and Consent Agreement" has been entered into with the owner of Reg. No. 2,923,675. A copy is submitted herewith.

The "Trademark Co-Existence and Consent Agreement" was carefully drafted in view of TMEP 1207.01(d)(viii), and the cases there cited, including *In re E. I. Du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). It is submitted that the Consent Agreement is well sufficient to overcome the Section 2(d) refusal.

For the record, in the Office Action mailed April 26, 2007, the trademark examining attorney characterizes applicant's previous argument as follows: "Applicant argues that no likelihood of confusion exists between the proposed mark and cited mark because similar marks previously co-existed on the Principal Register." That is not exactly what applicant previously argued. Rather, applicant pointed out that, when the currently-cited Reg. No. 2,923,675 was a pending application, the examiner in that case did not find a likelihood of confusion in view of the current applicant's then-active earlier Reg. No. 2,115,786. It was requested that the Office apply a consistent standard. Applicant did not previously argue that no likelihood of confusion exists. In the event the current "Trademark Co-Existence and Consent Agreement" is not accepted by the trademark examining attorney as sufficient to overcome the Section 2(d) refusal in the subject application, applicant is not precluded from initiating a cancellation proceeding against Reg. No. 2,923,675.

In view of the foregoing, it is requested that the subject application now be approved for publication.

EVIDENCE

Evidence in the nature of "Trademark Co-Existence and Consent Agreement" has been attached.

Original PDF file:

evi_7422720592-130138175_.IPLAY-1-2_Agreement.pdf

Converted PDF file(s) (4 pages)

Evidence-1

Evidence-2

Evidence-3

Evidence-4

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Steven C. Schnedler/ Date: 09/12/2007

Signatory's Name: Steven C. Schnedler

Signatory's Position: Attorney of record

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 78791447

Internet Transmission Date: Wed Sep 12 13:09:59 EDT 2007

TEAS Stamp: USPTO/RFR-74.227.205.92-2007091213095965

4421-78791447-4005ebca98633978f78dff38ba

25aedbb-N/A-N/A-20070912130138175993

TRADEMARK CO-EXISTENCE AND CONSENT AGREEMENT

This Trademark Co-Existence and Consent Agreement ("Agreement"), entered into as of the 31st day of August, 2007, is between Family Clubhouse Incorporated d/b/a iplay (hereinafter "Family Clubhouse"), a corporation organized and existing under the laws of the State of North Carolina and having a principal place of business at 2000 Riverside Drive, Unit 9, Asheville, North Carolina 28804; and International Playthings, Inc. (hereinafter "IPI") formerly called IPI Acquisition Corp., a corporation organized and existing under the laws of the State of New Jersey, with a principal place of business at 75D Lackawanna Avenue, Parsippany, New Jersey 07054. Both Family Clubhouse and IPI are sometimes referred to herein as a "Party" and, collectively, as the "Parties."

I. BACKGROUND

A. Family Clubhouse is a baby wear company, and has been in the business of designing, producing and selling clothing and accessories for infants and young children for more than 20 years. An internet website for Family Clubhouse is www.iplaybabywear.com.

B. International Playthings, Inc. is in the business of designing, producing and selling "award-winning toys for kids of all ages," and has been in business for 30 years. An internet website for International Playthings is www.intplay.com. International Playthings, Inc. has assigned certain trademark rights to IPI Acquisition Corp. which later changed its name to International Playthings, Inc.

C. Family Clubhouse was the owner of federal trademark Registration No. 2,115,786 of I PLAY. (plus design) as a trademark for *non-disposable swim diapers*, in International Class 25, claiming a date of first use of February 8, 1996. That registration was granted November 25,

1997. On February 10, 2005, a Final Decision and Cancellation Order was mailed, and Reg. No. 2,115,786 lapsed because an acceptable Section 8 Declaration had not been timely filed.

D. On December 5, 2001, International Playthings, Inc., a predecessor in interest of IPI, filed application Serial No. 76-344,977 for registration of I PLAY. (plus design). That mark was registered February 1, 2005 as Reg. No. 2,923,675, with a claimed date of first use of February 2, 2002. The identified goods are *educational toys, namely, stacking toys, rattles, blocks, rings and hammer and peg toys; bath toys; pretend play toys, namely, purse and make up sets, fishing reels and rod and fake fish sets, kitchen sets, and doctor kits; sand box toys; water and outdoor toys, namely, buckets, shovels, sand molds, sieves, sand mills and squirt toys; sport toys, namely, hula hoops, jump ropes, baseball bat and ball sets and soccer balls; games, namely, board games, card games and plastic action games; puzzles, namely, jigsaw puzzles, manipulative and cube type puzzles*, in International Class 28. By an assignment executed February 28, 2005 and recorded March 11, 2005, Reg. No. 2,923,675 was assigned to IPI Acquisition Corp. On March 2, 2005, IPI Acquisition Corp. changed its name to International Playthings, Inc.

E. On January 13, 2006, Family Clubhouse filed two replacement applications, for registration of I PLAY. (plus design) and of I PLAY., as trademarks for *children's and infants' cloth bibs; children's headwear; infantwear; and non-disposable swim diapers*, in International Class 25, claiming a date of first use of February 8, 1996. The applications were assigned Serial Nos. 78/791,447 and 78/791,467. In Office Actions mailed April 26, 2007, both of those applications were finally refused by the trademark examining attorney under Section 2(d) of the Trademark Act on the asserted basis of likelihood of confusion in view of Reg. No. 2,923,675.

F. Rather than initiate an action seeking cancellation of IPI's Reg. No. 2,923,675, Family Clubhouse has contacted IPI, through counsel, about co-existing in the marketplace. The Parties desire to settle this matter, and to enter into this agreement.

II. COEXISTENCE

A. The Parties are of the view that there is no likelihood of confusion because, among other things, the respective goods are different, the goods of the two Parties are sold in different markets and through different channels of trade, and the Parties are not aware of any instances of actual confusion.

B. Moreover, based on current information from the U.S. Patent and Trademark Office TARR and TDR databases, International Playthings, Inc.'s then-pending application No. 76/344,977 which matured into Reg. No. 2,923,675 was approved for publication on October 14, 2002, at which time Family Clubhouse's earlier Reg. No. 2,115,786 (registered November 25, 1997) was an active registration. There is no indication in the file of Reg. No. 2,923,675 that the trademark examining attorney in that case made an issue of Reg. No. 2,115,786, and accordingly did not find a likelihood of confusion.

III. AGREEMENT

A. Subject to paragraph III. B. below, IPI consents to Family Clubhouse's registration of the marks of Serial Nos. 78/791,447 and 78/791,467. Subject to paragraph III. B. below, Family Clubhouse agrees that it will not initiate a cancellation proceeding against Reg. No. 2,923,675.

B. In the event the USPTO maintains the Section 2(d) refusals in either or both of application Serial Nos. 78/791,447 and 78/791,467 in view of Reg. No. 2,923,675 notwithstanding the submission of this Agreement, the Parties' consents and agreements under

paragraph III. A. above are nullified, Family Clubhouse may initiate a cancellation proceeding against Reg. No. 2,923,675, IPI may set out any defenses as it sees fit, and no part of this Agreement may be referred to or relied upon to the contrary.

III. AVOIDANCE OF CONFUSION

The Parties hereto agree that they will make efforts to prevent confusion, and to cooperate and take steps to avoid any confusion that may arise in the future.

This Agreement shall be binding upon and inure to the benefit of the Parties, their successors, assigns, subsidiaries, licensees, affiliated companies, and all those acting in concert or participation with them.

IN WITNESS WHEREOF, the Parties have, with all the necessary corporate authority, duly executed this consent agreement as of the date first written above.

FAMILY CLUBHOUSE INCORPORATED

Signature: Becky Cannon

Name: Becky Cannon

Title: President

Date: 9/11/07

INTERNATIONAL PLAYTHINGS, INC.

Signature: Michael Vardas

Name: Michael Vardas

Title: CEO

Date: 8/31/2007

SERIAL NO: 78/791447

APPLICANT: Family Clubhouse, Incorporated d/b/a i p ETC.

78791447

CORRESPONDENT ADDRESS:

STEVEN C. SCHNEDLER
CARTER SCHNEDLER & MONTEITH, P.A.
PO BOX 2985
ASHEVILLE, NC 28802-2985

RETURN ADDRESS:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

MARK: I PLAY.

CORRESPONDENT'S REFERENCE/DOCKET NO: IPLAY-1

CORRESPONDENT EMAIL ADDRESS:

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

RESPONSE TIME LIMIT: TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE MAILING OR E-MAILING DATE.

MAILING/E-MAILING DATE INFORMATION: If the mailing or e-mailing date of this Office action does not appear above, this information can be obtained by visiting the USPTO website at <http://tarr.uspto.gov/>, inserting the application serial number, and viewing the prosecution history for the mailing date of the most recently issued Office communication.

Serial Number 78/791447

THIS IS A FINAL ACTION

This letter responds to the applicant's communication filed on January 26, 2007.

In the applicant's communication filed on January 26, 2007, the applicant (1) submitted arguments in favor of registration, contesting the refusal to register under Section 2(d) of the Trademark Act; and (2) deleted the prior claim of ownership of U.S. Reg. No. 2115786 for the purpose of printing on the registration certificate.

The following requirement has been satisfied and is now withdrawn: Deletion of Prior Registration Claim. TMEP §714.04.

For the reasons set forth below, the refusal under Trademark Act Section 2(d), 15 U.S.C. §1052(d), is now made **FINAL** with respect to U.S. Registration No. 2923675. 37 C.F.R. §2.64(a).

Trademark Act Section 2(d) Refusal – Likelihood of Confusion

The Court in *In re E. I. Du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973), listed the principal factors to be considered in determining whether there is a likelihood of confusion under Section 2(d). Any one of the factors listed may be dominant in any given case, depending upon the evidence of record. *In re Dixie Restaurants, Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997); In this case, the following factors are the most relevant: similarity of the marks, similarity of the goods and/or services, and similarity of trade channels of the goods and/or services. *See In re Opus One, Inc.*, 60 USPQ2d 1812 (TTAB 2001); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593 (TTAB 1999); *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999); *In re L.C. Licensing Inc.*, 49 USPQ2d 1379 (TTAB 1998); TMEP §§1207.01 *et seq.*

Taking into account the relevant *Du Pont* factors, a likelihood of confusion determination in this case involves a two-part analysis. First, the marks are compared for similarities in appearance, sound, connotation and commercial impression. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Second, the goods or services are compared to determine whether they are similar or related or whether the activities surrounding their marketing are such that confusion as to origin is likely. *In re National Novice Hockey League, Inc.*, 222 USPQ 638 (TTAB 1984); *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re Int'l Tel. and Tel. Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Prods. Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); TMEP §§1207.01 *et seq.*

Comparison of the Marks

The marks are compared for similarities in sound, appearance, meaning or connotation. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Similarity in any one of these elements may be sufficient to find a likelihood of confusion. *In re White Swan*

The applicant's mark, **PLAY**, is nearly identical to the literal portion of the registrant's mark, **PLAY**, in sound, appearance, meaning and connotation. The only difference between the applicant's mark and the literal portion of the registrant's mark is that the applicant has included a period following the word **PLAY**. The addition of the period is minor and does not significantly alter the appearance of the mark. When applicant's mark is compared to a registered mark, "the points of similarity are of greater importance than the points of difference." *Esso Standard Oil Co. v. Sun Oil Co.*, 229 F.2d 37, 40, 108 USPQ 161 (D.C. Cir. 1956) (internal citation omitted).

Secondly, although the registrant's mark and the applicant's mark contain different design elements, this difference does not obviate the similarity between the marks. When a mark consists of a word portion and a design portion, the word portion is more likely to be impressed upon a purchaser's memory and to be used in calling for the goods or services. Therefore, the word portion is normally accorded greater weight in determining likelihood of confusion. *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593, 1596 (TTAB 1999); *In re Appetito Provisions Co.*, 3 USPQ2d 1553 (TTAB 1987); *Amoco Oil Co. v. Amerco, Inc.*, 192 USPQ 729 (TTAB 1976); TMEP §1207.01(c)(ii). Because the literal portions of both marks are nearly identical in appearance, sound and meaning, the addition of the design element does not obviate the similarity between the marks in this case. *In re Shell Oil Company*, 992 F.2d 1204, 26 USPQ2d 1687 (Fed. Cir. 1993); *Coca-Cola Bottling Co. v. Joseph E. Seagram & Sons, Inc.*, 526 F.2d 556, 188 USPQ 105 (C.C.P.A. 1975); TMEP §1207.01(c)(ii).

Where the marks of the respective parties are identical or highly similar, then the commercial relationship between the goods or services of the respective parties must be analyzed carefully to determine whether there is a likelihood of confusion. *In re Opus One Inc.*, 60 USPQ2d 1812, 1815 (TTAB 2001); *In re Concordia Int'l Forwarding Corp.*, 222 USPQ 355 (TTAB 1983); TMEP §1207.01(a).

Comparison of the Goods and/or Services

The goods and/or services of the parties need not be identical or directly competitive to find a likelihood of confusion. Instead, they need only be related in some manner, or the conditions surrounding their marketing are such that they would be encountered by the same purchasers under circumstances that would give rise to the mistaken belief that the goods and/or services come from a common source. *On-line Careline Inc. v. America Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471 (Fed. Cir. 2000); *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984); *Guardian Prods. Co., Inc. v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); *In re Int'l Tel. & Tel. Corp.*, 197 USPQ 910 (TTAB 1978); TMEP §1207.01(a)(i).

The applicant's goods are "children's and infants' cloth bibs; children's headwear; infantwear; non-disposable swim diapers" in International Class 025. The registrant's goods are "educational toys, namely, stacking toys, rattles, blocks, rings and hammer and peg toys; bath toys; pretend play toys, namely, purse and make up sets, fishing reels and rod and fake fish sets, kitchen sets, and doctor kits; sand box toys; water and outdoor toys, namely, buckets, shovels, sand molds, sieves, sand mills and squirt toys; sport toys, namely, hula hoops, jump ropes, baseball bat and ball sets and soccer balls; games, namely, board games, card games and plastic action games; puzzles, namely, jigsaw puzzles, manipulative and cube type puzzles" in International Class 028.

Both the applicant and registrant's goods are geared toward infants and young children and are frequently sold through the same channels of trade. In the initial Office action, the examining attorney attached various Internet websites that showed retail stores that featured and sold both the applicant and registrant's goods. The examining attorney concluded that because the marks are similar and the goods are related, it is likely that consumers would believe that the goods emanate from a common source.

Applicant argues that no likelihood of confusion exists between the proposed mark and cited mark because similar marks previously co-existed on the Principal Register. Applicant notes that the Office approved the cited registration for publication on October 14, 2002, at which time the applicant's earlier registration (Reg. No. 2115786 – registered November 25, 1997; cancelled February 11, 2005), was an active registration, and, there is no indication in the file of Reg. No. 2923675 that the examining attorney in that case made an issue of Reg. No. 2115786.

Prior decisions and actions of other trademark examining attorneys in registering different marks are without evidentiary value and are not binding upon the Office. Each case is decided on its own facts, and each mark stands on its own merits. *AMF Inc. v. American Leisure Products, Inc.*, 177 USPQ 268, 269 (C.C.P.A. 1973); *In re International Taste, Inc.*, 53 USPQ2d 1604 (TTAB 2000); *In re Sunmarks Inc.*, 32 USPQ2d 1470 (TTAB 1994); *In re National Novice Hockey League, Inc.*, 222 USPQ 638, 641 (TTAB 1984); *In re Consolidated Foods Corp.*, 200 USPQ 477 (TTAB 1978).

However, the applicant's cancelled registration is *not* identical to the present application. Cancelled Registration No. 2115786 included a more limited scope of goods than that of the present application ("non-disposable swim diapers" in International Class 025 ONLY).

Priority of Use Not Relevant in Ex Parte Proceeding

Applicant's claim of priority of use is not relevant to this *ex parte* proceeding. *In re Calgon Corp.*, 435 F.2d 596, 168 USPQ 278 (C.C.P.A. 1971). Section 7(b) of the Trademark Act, 15 U.S.C. §1057(b), provides that a certificate of registration on the Principal Register is *prima facie* evidence of the validity of the registration, of the registrant's ownership of the mark and of the registrant's exclusive right to use the mark in commerce in connection with the goods or services specified in the certificate. During *ex parte* prosecution, the trademark examining attorney has no authority to review or decide on matters that constitute a collateral attack on the cited registration. TMEP §1207.01(d)(iv).

Conclusion

For the reasons described above, the refusal to register under Section 2(d) of the Trademark Act is maintained and made **FINAL**.

If applicant fails to respond to this final action within six months of the mailing date, the application will be abandoned. 15 U.S.C. §1062(b), 37 C.F.R. §2.65(a). Applicant may respond to this final action by:

- (1) submitting a response that fully satisfies all outstanding requirements, if feasible (37 C.F.R. §2.64(a)); and/or
- (2) filing an appeal to the Trademark Trial and Appeal Board, with an appeal fee of \$100 per class (37 C.F.R. §§2.6(a)(18) and 2.64(a); TMEP §§715.01 and 1501 *et seq.*; TBMP Chapter 1200).

In certain circumstances, a petition to the Director may be filed to review a final action that is limited to procedural issues, pursuant to 37 C.F.R. §2.63(b)(2). 37 C.F.R. §2.64(a). *See* 37 C.F.R. §2.146(b), TMEP §1704, and TBMP Chapter 1201.05 for an explanation of petitionable matters. The petition fee is \$100. 37 C.F.R. §2.6(a)(15).

/Laurie R. Kaufman/
Trademark Examining Attorney
Law Office 103
Ph: 571.272.8913
Fx: 571.273.9103

HOW TO RESPOND TO THIS OFFICE ACTION:

- **ONLINE RESPONSE:** You may respond using the Office's Trademark Electronic Application System (TEAS) Response to Office action form available on our website at <http://www.uspto.gov/teas/index.html>. If the Office action issued via e-mail, you must wait 72 hours after receipt of the Office action to respond via TEAS. **NOTE: Do not respond by e-mail. THE USPTO WILL NOT ACCEPT AN E-MAILED RESPONSE.**
- **REGULAR MAIL RESPONSE:** To respond by regular mail, your response should be sent to the mailing return address above, and include the serial number, law office number, and examining attorney's name. **NOTE: The filing date of the response will be the date of receipt in the Office,** not the postmarked date. To ensure your response is timely, use a certificate of mailing. 37 C.F.R. §2.197.

STATUS OF APPLICATION: To check the status of your application, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov>.

VIEW APPLICATION DOCUMENTS ONLINE: Documents in the electronic file for pending applications can be viewed and downloaded online at <http://portal.uspto.gov/external/portal/tow>.

GENERAL TRADEMARK INFORMATION: For general information about trademarks, please visit the Office's website at <http://www.uspto.gov/main/trademarks.htm>

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY SPECIFIED ABOVE.

OVERVIEW

SERIAL NUMBER	78791447	FILING DATE	01/13/2006
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	KAUFMAN, LAURIE R	L.O. ASSIGNED	103

PUB INFORMATION

RUN DATE	02/24/2007		
PUB DATE	N/A		
STATUS	661-RESPONSE AFTER NON-FINAL-ACTION-ENTERED		
STATUS DATE	02/23/2007		
LITERAL MARK ELEMENT	I PLAY.		
DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPUB 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

FILING BASIS

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	YES	1 (a)	YES	1 (a)	NO
1 (b)	NO	1 (b)	NO	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

MARK DATA

STANDARD CHARACTER MARK	NO
LITERAL MARK ELEMENT	I PLAY.
MARK DRAWING CODE	3-AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/LETTER(S)/NUMBER(S)
COLOR DRAWING FLAG	NO

CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	Family Clubhouse, Incorporated d/b/a i play
ADDRESS	2000 Riverside Drive, Unit 9 Asheville, NC 28804
ENTITY	03-CORPORATION
CITIZENSHIP	North Carolina

GOODS AND SERVICES

INTERNATIONAL CLASS	025
DESCRIPTION TEXT	Children's and infants' cloth bibs; children's headwear; infantwear; non-disposable swim diapers

GOODS AND SERVICES CLASSIFICATION

MISCELLANEOUS INFORMATION/STATEMENTS

CHANGE IN REGISTRATION

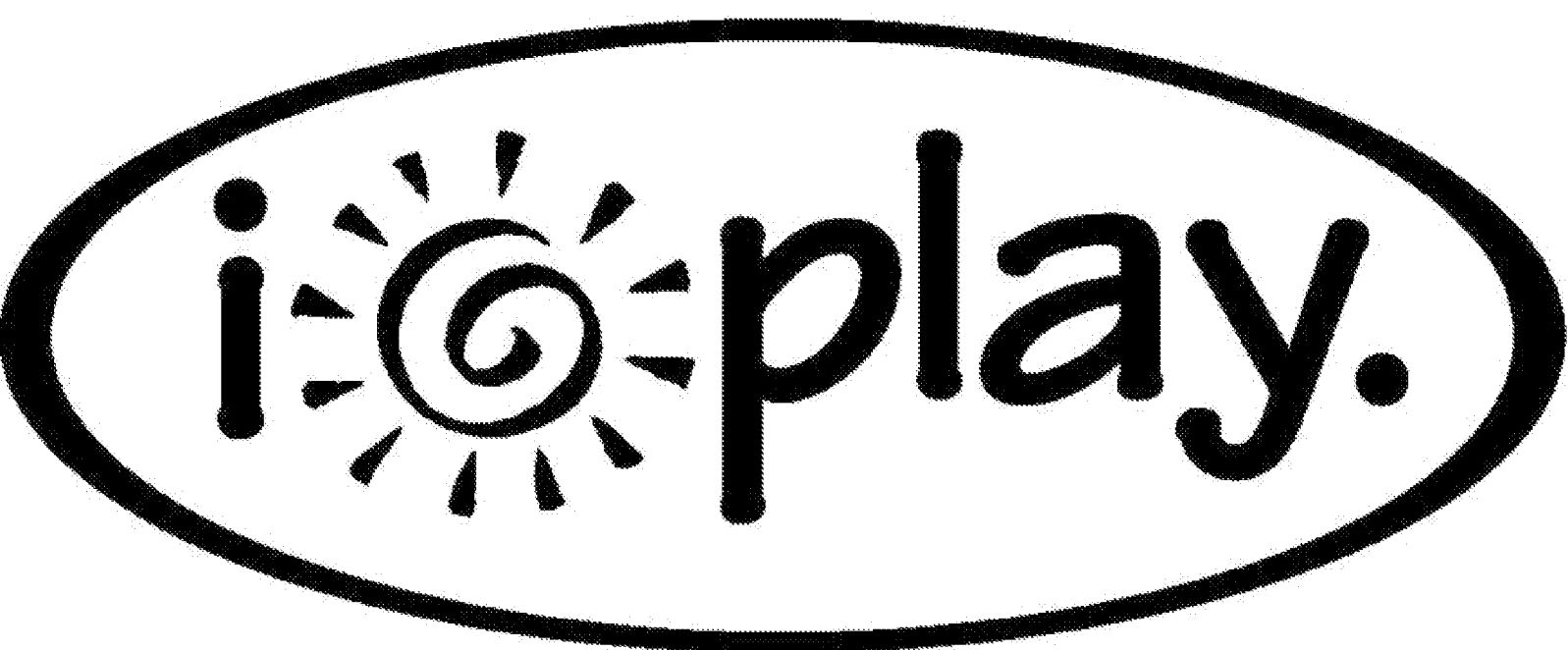
NO

PROSECUTION HISTORY

DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM
02/23/2007	ACEC	I	AMENDMENT FROM APPLICANT ENTERED	010
01/26/2007	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	009
02/23/2007	ALIE	A	ASSIGNED TO LIE	008
01/26/2007	MAIL	I	PAPER RECEIVED	007
07/10/2006	CNRT	F	NON-FINAL ACTION MAILED	006
07/10/2006	CNRT	R	NON-FINAL ACTION WRITTEN	005
06/30/2006	DOCK	D	ASSIGNED TO EXAMINER	004
06/30/2006	DOCK	D	ASSIGNED TO EXAMINER	003
01/20/2006	MDSC	O	NOTICE OF DESIGN SEARCH CODE MAILED	002
01/19/2006	NWAP	I	NEW APPLICATION ENTERED IN TRAM	001

CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	Steven C. Schnedler
CORRESPONDENCE ADDRESS	STEVEN C. SCHNEDLER CARTER SCHNEDLER & MONTEITH, P.A. PO BOX 2985 ASHEVILLE, NC 28802-2985
DOMESTIC REPRESENTATIVE	NONE





Docket No. IPLAY-1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Trademark Application of	:	Law Office 103
	:	
Family Clubhouse, Incorporated	:	Trademark Attorney:
d/b/a i play	:	Laurie R. Kaufman
	:	
Serial No.: 78/791,447	:	
	:	
Filed: January 13, 2006	:	Response to Action
	:	No. 1
	:	
Mark: I PLAY. (and design)	:	
	:	

Asheville, North Carolina
January 10, 2007RESPONSECommissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

01-26-2007

U.S. Patent & TMO/c/TM Mail Rcpt Dt #30

Sir:

This is in response to the Office Action mailed July 10, 2006 initially refusing registration on the asserted basis of likelihood of confusion under Section 2(d), and additionally, under the heading "Delete Prior Registration Claim," stating that applicant's claim of ownership of U.S. Registration No. 2,115,786 will not be printed on any registration which may issue from this application because Office records show that the claimed registration is cancelled.

In response to the implied requirement that the prior registration claim be deleted, please delete the prior claim of ownership of U.S. Reg. No. 2,115,786 for the purpose of printing on the registration certificate. However, the fact that

applicant is the owner of now-cancelled Reg. No. 2,115,786 should remain in the record of the subject application, for reasons discussed below under the heading "Trademark Act Section 2(d) Refusal."

Trademark Act Section 2(d) Refusal

Thus, registration is initially refused on the asserted basis of likelihood of confusion with the mark I PLAY (and bouncing ball design) of Reg. No. 2,923,675, for various educational toys.

In response, and at the outset, it is noted that applicant has priority of use, February 8, 1996, compared to a claimed date of use of February 2, 2002 for the cited Reg. No. 2,923,675.

Based on current information from the U.S. Patent and Trademark Office TARR and TDR databases, it is further noted that then-pending application No. 76/344,977 which matured into Reg. No. 2,923,675 was approved for publication on October 14, 2002, at which time applicant's earlier Reg. No. 2,115,786 (registered November 25, 1997) was clearly an active registration. There is no indication in the file of Reg. No. 2,923,675 that the Examining Attorney in that case made an issue of Reg. No. 2,115,786. Moreover, Reg. No. 2,923,675 was registered while applicant's earlier Reg. No. 2,115,786 technically was still in force.

To conclude, the Examining Attorney in currently cited Reg. No. 2,923,675 did not find a likelihood of confusion. The mark

of the subject application is identical to the mark of Reg. No. 2,115,786. It is requested that the Office apply a consistent standard, and approve the subject application.

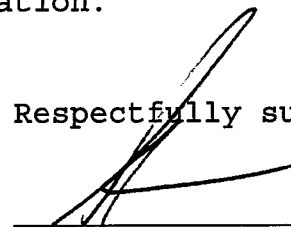
Otherwise, applicant will be forced to initiate a cancellation proceeding against Reg. No. 2,923,675, at substantial expense to both parties.

Although the list of identified goods in the subject application Serial No. 78/791,447 is more extensive than the identified goods "non-disposable swim diapers" in Reg. No. 2,115,786, "non-disposable swim diapers" are included in the identification of the subject application Serial No. 78/791,447, and the Trademark Examining Attorney has not drawn any distinction between the various goods identified in the subject application.

Conclusion

In view of the foregoing, it is requested that the application be approved for publication.

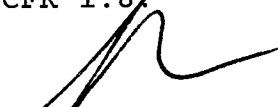
Respectfully submitted,



Steven C. Schnedler,
Attorney

Carter Schnedler & Monteith, P.A.
56 Central Avenue, Suite 101
P.O. Box 2985
Asheville, NC 28802
Telephone: (828) 252-6225

I hereby certify that this paper is being deposited this date with the U.S. Postal Service as First Class Mail in an envelope addressed to Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, under the provisions of 37 CFR 1.8.



Steven C. Schnedler

Date

January 10, 2007

SERIAL NO: 78/791447

APPLICANT: Family Clubhouse, Incorporated d/b/a i p ETC.

78791447

CORRESPONDENT ADDRESS:

STEVEN C. SCHNEDLER
CARTER SCHNEDLER & MONTEITH, P.A.
PO BOX 2985
ASHEVILLE, NC 28802-2985

RETURN ADDRESS:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

MARK: I PLAY.

CORRESPONDENT'S REFERENCE/DOCKET NO: IPLAY-1

CORRESPONDENT EMAIL ADDRESS:

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

RESPONSE TIME LIMIT: TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE MAILING OR E-MAILING DATE.

MAILING/E-MAILING DATE INFORMATION: If the mailing or e-mailing date of this Office action does not appear above, this information can be obtained by visiting the USPTO website at <http://tarr.uspto.gov/>, inserting the application serial number, and viewing the prosecution history for the mailing date of the most recently issued Office communication.

Serial Number 78/791447

The assigned trademark examining attorney has reviewed the referenced application and has determined the following:

Trademark Act Section 2(d) Refusal – Likelihood of Confusion

Registration of the proposed mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 2923675. Trademark Act Section 2(d), 15 U.S.C. §1052(d); TMEP §§1207.01 *et seq.* See the enclosed registration.

The Court in *In re E. I. Du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973), listed the principal factors to be considered in determining whether there is a likelihood of confusion under Section 2(d). Any one of the factors listed may be dominant in any given case, depending upon the evidence of record. *In re Dixie Restaurants, Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997); In this case, the following factors are the most relevant: similarity of the marks, similarity of the goods and/or services, and similarity of trade channels of the goods and/or services. See *In re Opus One, Inc.*, 60 USPQ2d 1812 (TTAB 2001); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593 (TTAB 1999); *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999); *In re L.C. Licensing Inc.*, 49 USPQ2d 1379 (TTAB 1998); TMEP §§1207.01 *et seq.*

Taking into account the relevant *Du Pont* factors, a likelihood of confusion determination in this case involves a two-part analysis. First, the marks are compared for similarities in appearance, sound, connotation and commercial impression. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Second, the goods or services are compared to determine whether they are similar or related or whether the activities surrounding their marketing are such that confusion as to origin is likely. *In re National Novice Hockey League, Inc.*, 222 USPQ 638 (TTAB 1984); *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re Int'l Tel. and Tel. Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Prods. Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); TMEP §§1207.01 *et seq.*

Comparison of the Marks

The marks are compared for similarities in sound, appearance, meaning or connotation. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Similarity in any one of these elements may be sufficient to find a likelihood of confusion. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1536 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1043 (TTAB 1987); *In re Mack*, 197 USPQ 755 (TTAB 1977); TMEP §1207.01(b).

The applicant's mark, I PLAY., is nearly identical to the literal portion of the registrant's mark, I PLAY, in sound, appearance, meaning and connotation. The only difference between the applicant's mark and the literal portion of the registrant's mark is that the applicant has included a period following the word PLAY. The addition of the period is minor and does not significantly alter the appearance of the mark. When applicant's mark is compared to a registered mark, "the points of similarity are of greater importance than the points of difference." *Esso Standard Oil Co. v. Sun Oil Co.*, 229 F.2d 37, 40, 108 USPQ 161 (D.C. Cir. 1956) (internal citation omitted).

upon a purchaser's memory and to be used in calling for the goods or services. Therefore, the word portion is normally accorded greater weight in determining likelihood of confusion. *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593, 1596 (TTAB 1999); *In re Appetito Provisions Co.*, 3 USPQ2d 1553 (TTAB 1987); *Amoco Oil Co. v. Amerco, Inc.*, 192 USPQ 729 (TTAB 1976); TMEP §1207.01(c)(ii). Because the literal portions of both marks are nearly identical in appearance, sound and meaning, the addition of the design element does not obviate the similarity between the marks in this case. *In re Shell Oil Company*, 992 F.2d 1204, 26 USPQ2d 1687 (Fed. Cir. 1993); *Coca-Cola Bottling Co. v. Joseph E. Seagram & Sons, Inc.*, 526 F.2d 556, 188 USPQ 105 (C.C.P.A. 1975); TMEP §1207.01(c)(ii).

Comparison of the Goods

The goods and/or services of the parties need not be identical or directly competitive to find a likelihood of confusion. Instead, they need only be related in some manner, or the conditions surrounding their marketing are such that they would be encountered by the same purchasers under circumstances that would give rise to the mistaken belief that the goods and/or services come from a common source. *On-line Careline Inc. v. America Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471 (Fed. Cir. 2000); *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984); *Guardian Prods. Co., Inc. v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); *In re Int'l Tel. & Tel. Corp.*, 197 USPQ 910 (TTAB 1978); TMEP §1207.01(a)(i).

The applicant has applied to register the mark I PLAY. for the following goods "children's and infants' cloth bibs; children's headwear; infantwear; non-disposable swim diapers" in International Class 025. The registrant's goods include "EDUCATIONAL TOYS, NAMELY, STACKING TOYS, RATTLES, BLOCKS, RINGS AND HAMMER AND PEG TOYS; BATH TOYS; PRETEND PLAY TOYS, NAMELY, PURSE AND MAKE UP SETS, FISHING REELS AND ROD AND FAKE FISH SETS, KITCHEN SETS, AND DOCTOR KITS; SAND BOX TOYS; WATER AND OUTDOOR TOYS, NAMELY, BUCKETS, SHOVELS, SAND MOLDS, SIEVES, SAND MILLS AND SQUIRT TOYS; SPORT TOYS, NAMELY, HULA HOOPS, JUMP ROPES, BASEBALL BAT AND BALL SETS AND SOCCER BALLS; GAMES, NAMELY, BOARD GAMES, CARD GAMES AND PLASTIC ACTION GAMES; PUZZLES, NAMELY, JIGSAW PUZZLES, MANIPULATIVE AND CUBE TYPE PUZZLES" in International Class 028.

Both the applicant and registrant's marks are geared toward infants and young children. As evidenced by the attached Internet websites, the applicant and registrant's goods are sold in the same retail stores. Because the goods travel through the same channels of trade, it is likely that consumers would believe that the goods emanate from a common source.

Any doubt regarding a likelihood of confusion is resolved in favor of the prior registrant. *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988); TMEP §§1207.01(d)(i). Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

* * *

If applicant chooses to respond to the refusal(s) to register, then applicant must also respond to the following requirement(s).

Delete Prior Registration Claim

Applicant's claim of ownership of U.S. Registration No. 2115786 will not be printed on any registration which may issue from this application because Office records show that the claimed registration is cancelled. Only claims of ownership of live registrations are printed. 37 C.F.R. §2.36; TMEP §812.

Response

If the applicant has questions about its application or needs assistance in responding to this Office action, please telephone the assigned trademark examining attorney directly at the number below.

/Laurie R. Kaufman/
Trademark Examining Attorney
Law Office 103
Ph: 571.272.8913
Fx: 571.273.9103

HOW TO RESPOND TO THIS OFFICE ACTION:

- **ONLINE RESPONSE:** You may respond using the Office's Trademark Electronic Application System (TEAS) Response to Office action form available on our website at <http://www.uspto.gov/teas/index.html>. If the Office action issued via e-mail, you must wait 72 hours after receipt of the Office action to respond via TEAS. **NOTE: Do not respond by e-mail. THE USPTO WILL NOT ACCEPT AN E-MAILED RESPONSE.**
- **REGULAR MAIL RESPONSE:** To respond by regular mail, your response should be sent to the mailing return address above, and include the serial number, law office number, and examining attorney's name. **NOTE: The filing date of the response will be the date of receipt in the Office,** not the postmarked date. To ensure your response is timely, use a certificate of mailing. 37 C.F.R. §2.197.

VIEW APPLICATION DOCUMENTS ONLINE. Documents in the electronic file for pending applications can be viewed and downloaded online at <http://portal.uspto.gov/external/portal/tow>.

GENERAL TRADEMARK INFORMATION: For general information about trademarks, please visit the Office's website at <http://www.uspto.gov/main/trademarks.htm>

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY SPECIFIED ABOVE.

Print: Jun 30, 2006

76344977

DESIGN MARK

Serial Number

76344977

Status

REGISTERED

Word Mark

I-PLAY

Standard Character Mark

No

Registration Number

2923675

Date Registered

2005/02/01

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

IPI ACQUISITION CORP. CORPORATION DELAWARE 75D LACKAWANNA AVENUE
PARSIPPANY NEW JERSEY 07054

Goods/Services

Class Status -- ACTIVE. IC 028. US 022 023 038 050. G & S:
EDUCATIONAL TOYS, NAMELY, STACKING TOYS, RATTLES, BLOCKS, RINGS AND
HAMMER AND PEG TOYS; BATH TOYS; PRETEND PLAY TOYS, NAMELY, PURSE AND
MAKE UP SETS, FISHING REELS AND ROD AND FAKE FISH SETS, KITCHEN SETS,
AND DOCTOR KITS; SAND BOX TOYS; WATER AND OUTDOOR TOYS, NAMELY,
BUCKETS, SHOVELS, SAND MOLDS, SIEVES, SAND MILLS AND SQUIRT TOYS;
SPORT TOYS, NAMELY, HULA HOOPS, JUMP ROPES, BASEBALL BAT AND BALL SETS
AND SOCCER BALLS; GAMES, NAMELY, BOARD GAMES, CARD GAMES AND PLASTIC
ACTION GAMES; PUZZLES, NAMELY, JIGSAW PUZZLES, MANIPULATIVE AND CUBE
TYPE PUZZLES. First Use: 2002/02/02. First Use In Commerce:
2002/02/02.

Filing Date

2001/12/05

Examining Attorney

AYALA, LOURDES

Print: Jun 30, 2006

76344977

Attorney of Record
PAUL H KOCHANSKI





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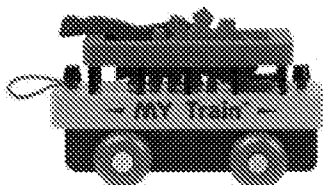


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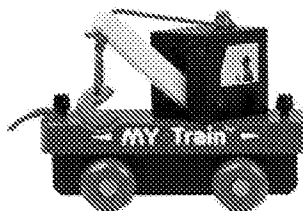


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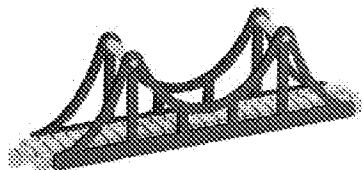


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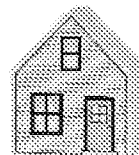
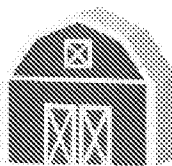
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Wooden Railway System



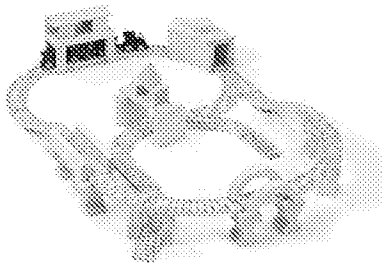
RICH FROG

Zetano

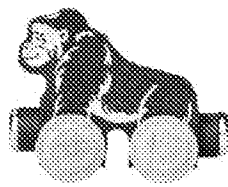
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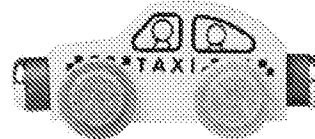


[animal accessory train cars](#)



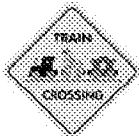
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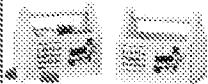


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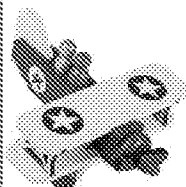


[circus train railway](#)



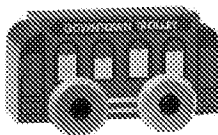
[toy vehicles](#)

[montgomery schenck classics](#)

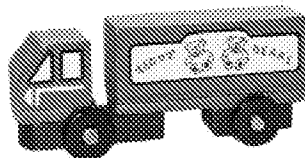


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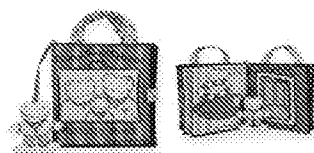


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educational toys

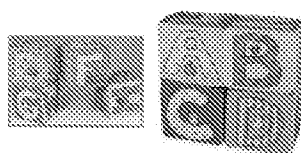
games

soft activity books



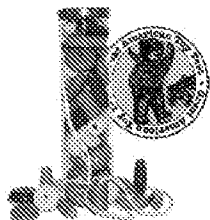
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flip blocks



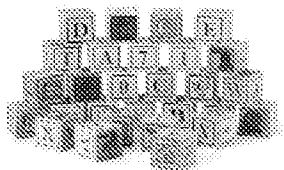
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wing face junior bears



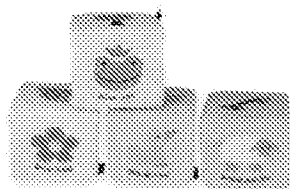
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wooden blocks



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soft blocks

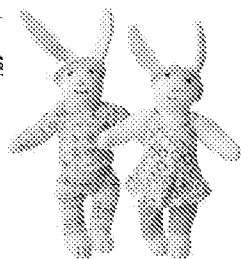


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stuffed animals

sleepies

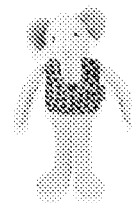
botties



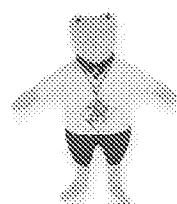
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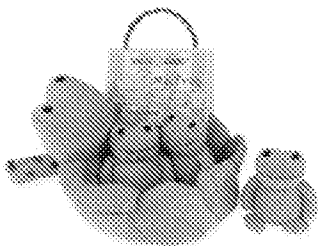
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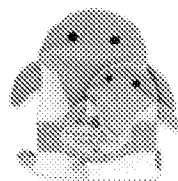
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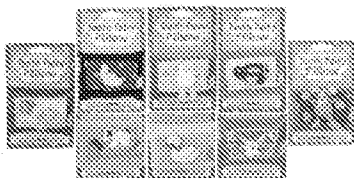
miscellaneous fun stuff

fluffy flashlight



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tooth fairy pillows and boxes



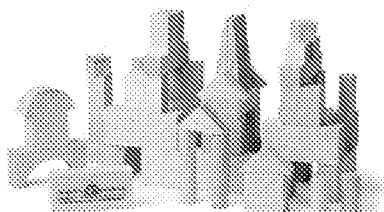
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my best blocks -
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- [i play boys board trunks 0-4yrs](#)
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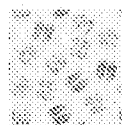
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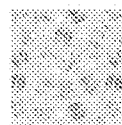
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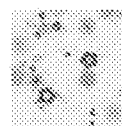
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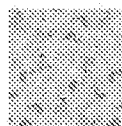
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pink kiku



yellow kiku



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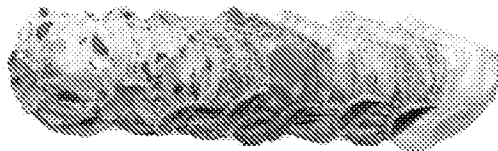
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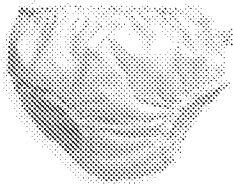
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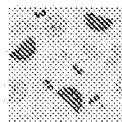


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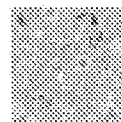
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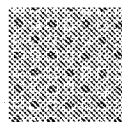
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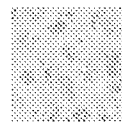
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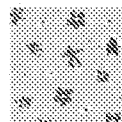
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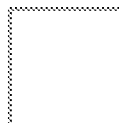
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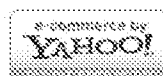
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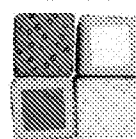
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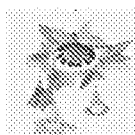
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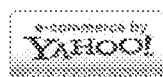


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








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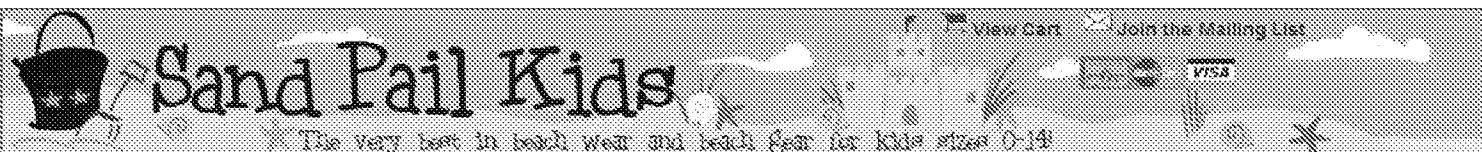
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Home

Swimsuits
Sun Protection Swimsuits
Floating Swimsuits
Thermal Suits / Wet Suits
Swim Diapers
Resort Wear
Beach Shoes
Hats
Sunglasses
Sunscreen
Beach Toys
Brands

Customer Care
Come Shopping!
Sun Safety Facts
Favorite Links!

Swim Diapers for Boys and Girls

We carry a selection of My Pool Pal Swim-sters® Swim Diapers which are proven to help prevent the release of deadly bacteria into the water. We also carry I Play which also makes a great looking swim diaper and swimsuits with built in swim diapers!



Huggies Little Swimmers
Small
\$9.50

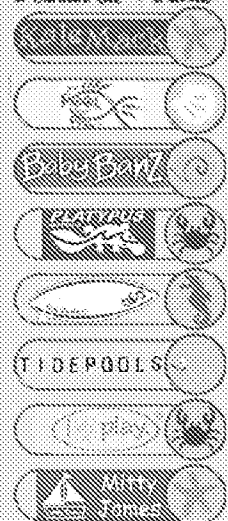


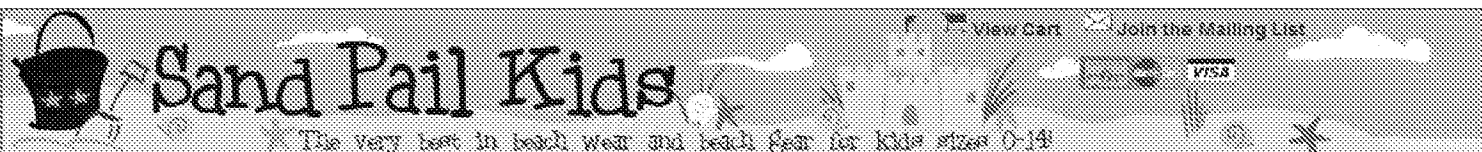
Huggies Little Swimmers
Medium
\$9.50



Huggies Little Swimmers
Large
\$9.50

Featured Brands





Home

Swimsuits
Sun Protection Swimsuits
Floating Swimsuits
Thermal Suits / Wet Suits
Swim Diapers
Resort Wear
Beach Shoes
Hats
Sunglasses
Sunscreen
Beach Toys
Brands

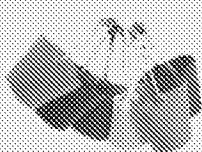
Customer Care
Come Shopping!
Sun Safety Facts
Favorite Links!

Special Price

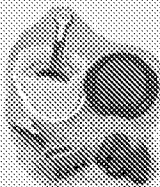
e-commerce by
YAHOO!

Beach Toys

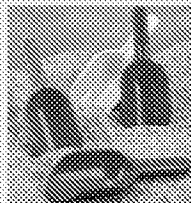
We carry a great selection of beach toys and beach floats for your kids. All of our beach toy and float brands are designed to provide extreme fun at the beach!



The Incredible Scream
Bucket from England!
\$10.00

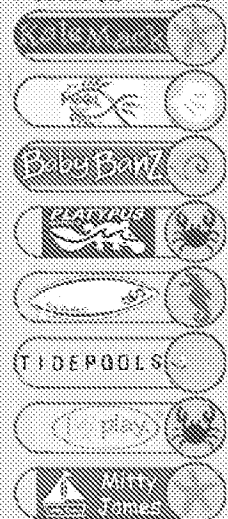


Deluxe Beach Set
\$10.00



Deluxe Sand Scoop
\$2.00

Featured Brands



			Docs	Images	Duration	
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02	11258	N/A	0	0	0:03	i[bi,ti] not dead[lid]
03	3367	N/A	0	0	0:02	010525[DC] not dead[lid]
04	4305	N/A	0	0	0:03	260126[DC] not dead[lid]
05	84	0	55	66	0:01	1 and (2 or 3 or 4)
06	67	0	3	67	0:01	2 and (3 or 4)
07	1502	N/A	0	0	0:02	1 and "025"[cc]
08	1103	N/A	0	0	0:02	1 and ("025" or "035" or a or b or 200)[ic]
09	4921	N/A	0	0	0:02	*play*[bi,ti] not dead[lid]
10	1379	N/A	0	0	0:02	9 and "025"[cc]
11	1033	N/A	0	0	0:02	9 and ("025" or "035" or a or b or 200)[ic]
12	2870	N/A	0	0	0:03	play[bi,ti] not dead[lid]
13	742	N/A	0	0	0:02	12 and "025"[cc]
14	557	N/A	0	0	0:02	12 and ("025" or "035" or a or b or 200)[ic]
15	1608	N/A	0	0	0:01	(3 or 4) and ("025" or "035" or a or b or 200)[ic]

Session started 6/30/2006 5:01:02 PM

Session finished 6/30/2006 5:12:52 PM

Total search duration 0 minutes 29 seconds

Session duration 11 minutes 50 seconds

Default NEAR limit=1ADJ limit=1

Sent to TIGRS as Serial Number: 78791447



MAILING DATE: Jan 20, 2006
DESIGN SEARCH CODES FOR
SERIAL NUMBER: 78791447

For automated searching purposes, the USPTO applies design search codes to figurative, non-textual elements found in marks. A manual listing design search codes is available on the internet at <http://www.uspto.gov/tmdb/dscm/index.html>. To suggest changes to design search codes applied to your mark, send an email to TMDesignCodeComments@USPTO.GOV or call 1-800-786-9199 to speak to a Customer Service representative. Design search codes applied to the above mentioned serial number are listed below:

01.05.25 - Sun, other representations of the sun
26.01.13 - Circles, two (not concentric); Two circles
26.01.21 - Circles that are totally or partially shaded
26.03.17 - Concentric ovals; Concentric ovals and ovals within ovals; etc.
27.03.02 - Geometric figures forming punctuation; etc.

Side - 2

UNITED STATES PATENT AND TRADEMARK OFFICE
COMMISSIONER FOR TRADEMARKS
P.O. BOX 1451
ALEXANDRIA, VA 22313-1451

FIRST-CLASS MAIL
U.S POSTAGE
PAID

STEVEN C. SCHNEDLER
CARTER SCHNEDLER & MONTEITH, P.A.
PO BOX 2985
ASHEVILLE, NC 28802-2985

Serial Number: 78791447

Filing Date: 01/13/2006

The table below presents the data as entered.

Input Field	Entered
MARK SECTION	
MARK FILE NAME	\\TICRS\EXPORT4\IMAGEOUT4 \\787\914\78791447\xml2\AP P0002.JPG
STANDARD CHARACTERS	NO
USPTO-GENERATED IMAGE	NO
LITERAL ELEMENT	i play.
COLOR MARK	NO
PIXEL COUNT ACCEPTABLE	YES
PIXEL COUNT	892 x 582
OWNER SECTION	
NAME	Family Clubhouse, Incorporated d/b/a i play
STREET	2000 Riverside Drive, Unit 9
CITY	Asheville
STATE	North Carolina
ZIP/POSTAL CODE	28804
COUNTRY	United States
AUTHORIZED EMAIL COMMUNICATION	No
LEGAL ENTITY SECTION	
TYPE	CORPORATION
STATE/COUNTRY OF INCORPORATION	North Carolina
GOODS AND/OR SERVICES SECTION	
INTERNATIONAL CLASS	025
DESCRIPTION	children's and infants' cloth bibs; children's headwear; infantwear; non-disposable swim diapers
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 02/08/1996
FIRST USE IN COMMERCE DATE	At least as early as 02/08/1996
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT4\IMAGEOUT4 \\787\914\78791447\xml2\AP P0003.JPG
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SPECIMEN DESCRIPTION	digital photographs of product packaging and labels
ADDITIONAL STATEMENTS SECTION	

MISCELLANEOUS STATEMENT	<p>prior Reg. No. 2,115,786 of the identical mark. Reg. No. 2,115,786 was cancelled after registrant inadvertently failed to file an acceptable Section 8 Declaration. A combined Sections 8 and 15 Declaration was executed by registrant and timely filed in Reg. No. 2,115,786 by registrant's previous attorney George J. Netter on August 15, 2003. However, in a Post Registration Office Action mailed November 18, 2003, the combined Declaration was refused, and no response was filed within the six-month period for response, which elapsed May 18, 2004. No communication was sent to registrant, who assumed that Reg. No. 2,115,786 was being maintained. It is now known that registrant's prior attorney George J. Netter, believed to have been a sole practitioner, died at some point. It is assumed he was ill and not attending to his practice during the relevant period ending May 18, 2004. More recently, registrant, through numerous telephone messages left on a telephone answering machine at Mr. Netter's office, diligently worked to retrieve registrant's files. Those files were recently sent to registrant, and the unintended lapse of the registration noted. There was no intention to abandon the prior registration, and the mark has been in continuous use.</p>
SIGNATURE SECTION	
SIGNATORY FILE	WTICRS\EXPORT4\IMAGEOUT4 V787\914\78791447\xml2\AP P0007.JPG
SIGNATORY NAME	Becky Cannon
SIGNATORY POSITION	President
PAYMENT SECTION	
NUMBER OF CLASSES	1
NUMBER OF CLASSES PAID	1
SUBTOTAL AMOUNT	325
TOTAL AMOUNT	325
PAYMENT METHOD	CC
ATTORNEY	
NAME	Steven C. Schnedler
FIRM NAME	Carter Schnedler & Monteith, P.A.
STREET	P.O. Box 2985
CITY	Asheville
STATE	North Carolina
ZIP/POSTAL CODE	28802
COUNTRY	United States
PHONE	(828) 252-6225
FAX	(828) 252-6316
EMAIL	schnedler@ashevillepatent.com
AUTHORIZED EMAIL COMMUNICATION	No
ATTORNEY DOCKET NUMBER	IPLAY-1
OTHER APPOINTED ATTORNEY(S)	David M. Carter and J. Derel Monteith, Jr.
CORRESPONDENCE SECTION	
NAME	Steven C. Schnedler
FIRM NAME	Carter Schnedler & Monteith, P.A.

STATE	North Carolina
ZIP/POSTAL CODE	28802
COUNTRY	United States
PHONE	(828) 252-6225
FAX	(828) 252-6316
EMAIL	schnedler@ashevillepatent.com
AUTHORIZED EMAIL COMMUNICATION	No
FILING INFORMATION	
SUBMIT DATE	Fri Jan 13 15:43:23 EST 2006
TEAS STAMP	USPTO/BAS-7014474145-2006 0113154323181324-78791447 -200a27dbaa2c84edee96b8e7 11e8edf84-CC-211-20060113 153856948204

FILED: Patent 1/13/06 (Firm 8/1/06)
 (Note: This is a 15-day extension)

Trademark/Service Mark Application, Principal Register

Serial Number: 78791447

Filing Date: 01/13/2006

To the Commissioner for Trademarks:

MARK: i play. (stylized and/or with design, see mark)

The literal element of the mark consists of i play..

The applicant, Family Clubhouse, Incorporated d/b/a i play, a corporation of North Carolina, residing at 2000 Riverside Drive, Unit 9, Asheville, North Carolina, United States, 28804, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

The applicant, or the applicant's related company or licensee, is using the mark in commerce, and lists below the dates of use by the applicant, or the applicant's related company, licensee, or predecessor in interest, of the mark on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

International Class 025: children's and infants' cloth bibs; children's headwear; infantwear; non-disposable swim diapers

In International Class 025, the mark was first used at least as early as 02/08/1996, and first used in commerce at least as early as 02/08/1996, and is now in use in such commerce. The applicant is submitting or will submit one specimen for *each class* showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) digital photographs of product packaging and labels.

- Specimen - 1
- Specimen - 2
- Specimen - 3
- Specimen - 4

Applicant claims ownership of U.S. Registration Number(s) 2115786.

This application for registration is in part to replace applicant's prior Reg. No. 2,115,786 of the identical mark. Reg. No. 2,115,786 was cancelled after registrant inadvertently failed to file an acceptable Section 8 Declaration. A combined Sections 8 and 15 Declaration was executed by registrant and timely filed in Reg. No. 2,115,786 by registrant's previous attorney George J. Netter on August 15, 2003. However, in a Post Registration Office Action mailed November 18, 2003, the combined Declaration was refused, and no response was filed within the six-month period for response, which elapsed May 18, 2004. No communication was sent to registrant, who assumed that Reg. No. 2,115,786 was being maintained. It is now known that registrant's prior attorney George J. Netter, believed to have been a sole practitioner, died at some point. It is assumed he was ill and not attending to his practice during the relevant period ending May 18, 2004. More recently, registrant, through numerous

The applicant hereby appoints Steven C. Schnedler and David M. Carter and J. Derel Monteith, Jr. of Carter Schnedler & Monteith, P.A., P.O. Box 2985, Asheville, North Carolina, United States, 28802 to submit this application on behalf of the applicant. The attorney docket/reference number is IPLAY-1.

A fee payment in the amount of \$325 will be submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature:

Signatory's Name: Becky Cannon

Signatory's Position: President

Signatory's Signature: Signature

Mailing Address:

Steven C. Schnedler

P.O. Box 2985

Asheville, North Carolina 28802

RAM Sale Number: 211

RAM Accounting Date: 01/17/2006

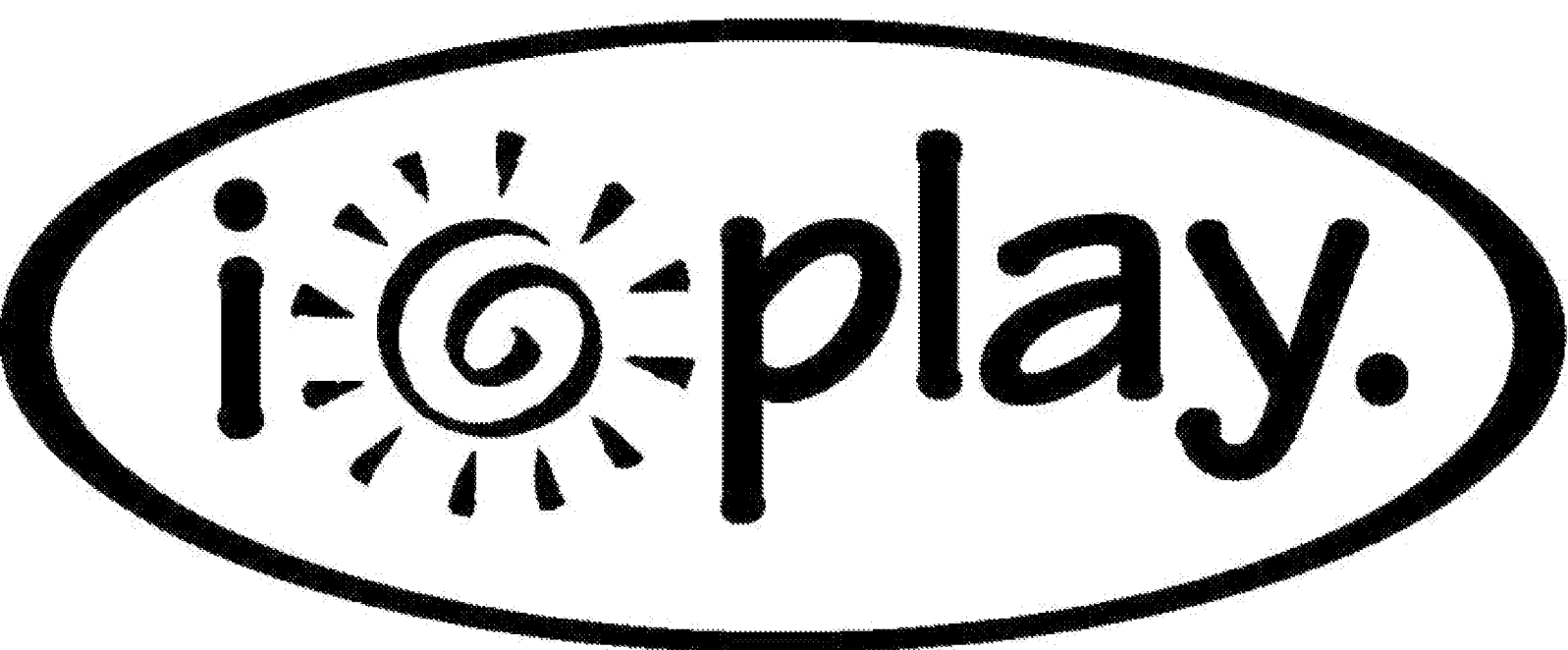
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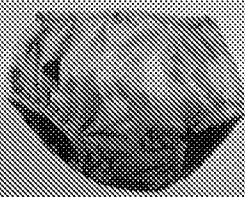
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i play
Long wear

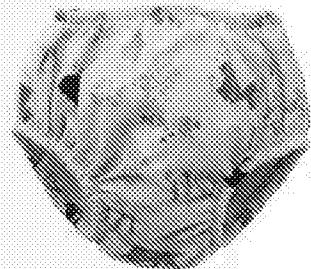
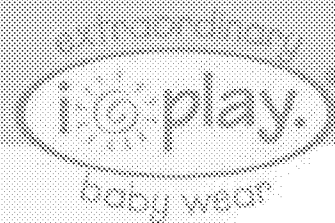


Swim Diaper

Large
22-25 lbs (10-11.5 kg)

- Swim Diapers that really work
- A swimsuit and trim-fitting diaper in one, or can be worn over a disposable
- Fun prints that coordinate with other i play.® Swimwear

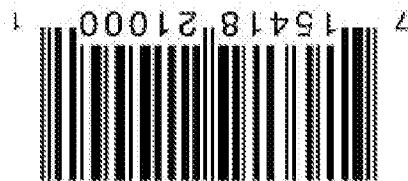




Swim Diaper

Small
13-18 lbs (6-8 kg)

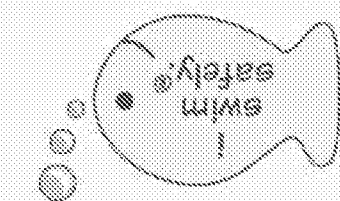
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Made in China Item #21000

Schwimmwindel
Wasserdichtes Material, auslaufsicher
Angenehm und gute Passform
KEINE ZUSÄTZLICHE WINDELNOTWENDIG
Zweifach
Wasserdichtes Material
Hautfreundlich
Garn anders für mehr nützige

For healthy swimming tips visit the
Centers for Disease
Control and Prevention
Web site at
www.healthyswimming.org



size	age months	weight lbs	weight kg
S	6 mo.	13-18	6-8
M	12 mo.	18-22	8-10
L	18 mo.	22-25	10-11.5
XL	2 yr.	25-30	11.5-13.5
XXL	3 yr.	30-37	13.5-17
4T	4 yr.	37-46	17-21

Couche-culotte de natation
Nœud imperméable
Ajusté et confortable
PAS D'AUTRE CÔTECHÉ D'ÉTOFFES
Façon de nager
Nœud imperméable
Ajustado
NINGUN OTRO PAÑAL NECESARIO

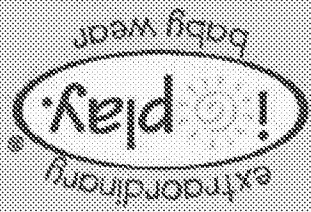
Swim Diaper

Keeping babies happy for over 20 years.

Keep packaging
out of reach
of children.
RN#91430



According to public health
departments, Swim Diapers that
really work are:
• Snug fitting around the legs and waist to
contain solid matter
• Made from waterproof material to
prevent leakage
Why does your baby need an
i play.® Swim Diaper?
i play.® approved Swim Diapers help prevent
messy pool accidents because they meet the
above standards
• 27 states encourage the use of approved
Swim Diapers in public pools
www.ipplaybabywear.com



Flip Pocket

catches more mess

94°C

1/8"

12-24 months

Stage 4

extraordinary

ixplay.

baby wool

Super Duper Bib

- Waterproof
- Easy care and durable
- Developmental designs



ables happy for over 20 years.

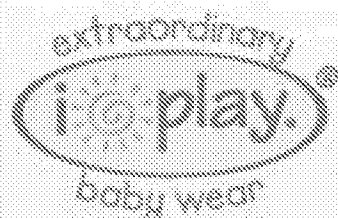


Waterproof Bib 3 Pack



6-12 months

Stage 3



Wash 'N Wipe Bib

- Flip Pocket catches more mess
- Waterproof
- Easy care
- Lightweight and comfortable



i play.® Keeping babies happy for over 20 years.

Stage	Ages	What Happens	Bibs Needed
Stage 1	Birth-2 months	Milk, drops, leaks	Absorbent, small, simple, basic
Stage 2	3-6 months	Teething, lots of drooling, lots of drool, spit-up	Absorbent, lots of bibs, cute, sweet
Stage 3	6-12 months	Solid foods with a spoon, controlled mess, chewing, exploring	Waterproof backing, pullover bibs, easy on and off, bright colors
Stage 4	12-24 months	Self-feeding, exploring, very messy	Easy to wipe and clean, waterproof, more coverage, fun colors, developmental designs

EVA Material

Matière EVA

Tejido EVA

EVA Material

EVA 生地

www.iplaybabywear.com

Made in China

Trademark/Service Mark Application, Principal Register

worked to retrieve registrant's files. Those files were recently sent to registrant, and the unintended lapse of the registration noted. There was no intention to abandon the prior registration, and the mark has been in continuous use.

The applicant hereby appoints Steven C. Schnedler and David M. Carter and J. Derel Monteith, Jr. of Carter Schnedler & Monteith, P.A.P.O. Box 2985, Asheville, North Carolina, United States, 28802 to submit this application on behalf of the applicant. The attorney docket/reference number is IPLAY-1.

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APPLICANT NAME: Family Clubhouse, Incorporated d/b/a i play

MARK: i play. (stylized and/or with design)

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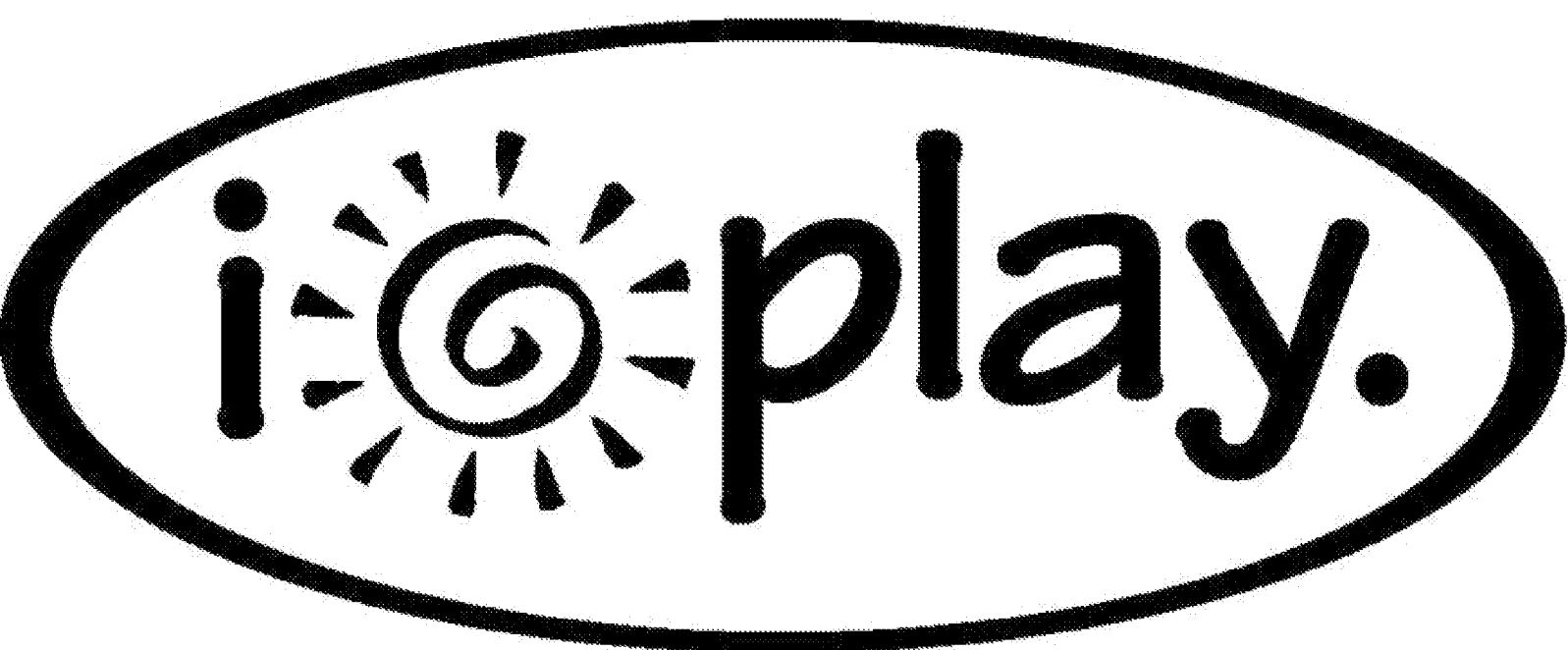
The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: Becky Cannon Date: January 13, 2006

Signatory's Name: Becky Cannon

Signatory's Position: President

[Go Back](#)





i play
Long wear

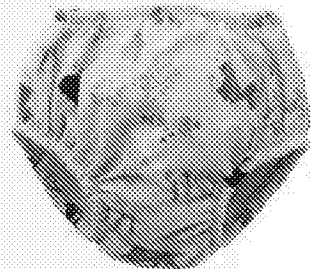
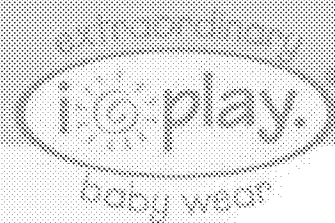


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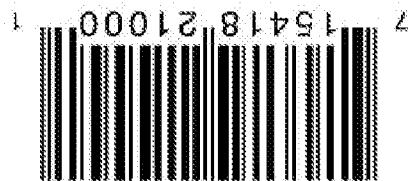




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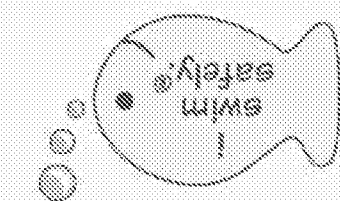
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KEINE ZUSÄTZLICHE WINDELNOTWENDIG
Zweifach
Wasserdichtes Material
Angenehm und gute Passform
Geben andere für mehr nützliche

For healthy swimming tips visit the
Centers for Disease
Control and Prevention
Web site at
www.healthyswimming.org



size	age months	weight lbs	weight kg
S	6 mo.	13-18	6-8
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L	18 mo.	22-25	10-11.5
XL	2 yr.	25-30	11.5-13.5
XXL	3 yr.	30-37	13.5-17
4T	4 yr.	37-46	17-21

Couche-culotte de natation
Nœud imperméable
Ajusté et confortable
PAS D'AUTRE CÔTE NECESSAIRE
Pañal de nadar
Nœud impermeable
Ajustado
NINGUN OTRO PAÑAL NECESARIO

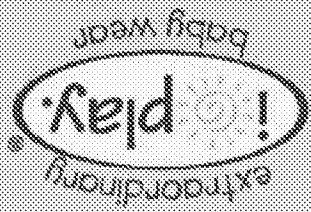
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Keep packaging
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RN#91430



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Why does your baby need an
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i play.® approved Swim Diapers help prevent
messy pool accidents because they meet the
above standards
• 27 states encourage the use of approved
Swim Diapers in public pools
www.ipplaybabywear.com



Flip Pocket

catches more mess

94°C

1/800

12-24 months

Stage 4

extraordinary

play.

baby wool

Super Duper Bib

- Waterproof
- Easy care and durable
- Developmental designs



ables happy for over 20 years.



Waterproof Bib 3 Pack



6-12 months

Stage 3



Wash 'N Wipe Bib

- Flip Pocket catches more mess
- Waterproof
- Easy care
- Lightweight and comfortable



i play.® Keeping babies happy for over 20 years.

Stage	Ages	What Happens	Bibs Needed
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Stage 2	3-6 months	Teething, lots of drooling, lots of drool, spit-up	Absorbent, lots of bibs, cute, sweet
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EVA Material

Matière EVA

Tejido EVA

EVA Material

EVA 生地

www.iplaybabywear.com

Made in China

MARK: I PLAY.

78791467

CORRESPONDENT ADDRESS:

STEVEN C. SCHNEDLER
CARTER SCHNEDLER & MONTEITH, P.A.
PO BOX 2985
ASHEVILLE, NC 28802-2985

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Family Clubhouse, Incorporated d/b/a i p
ETC.

CORRESPONDENT'S REFERENCE/DOCKET NO:

IPLAY-2

CORRESPONDENT E-MAIL ADDRESS:

NOTICE OF SUSPENSION

ISSUE/MAILING DATE:

SUSPENSION PROCEDURE: This suspension notice serves to suspend action on the application for the reason(s) specified below. No response is needed. 37.C.F.R. §2.67. The Office will conduct periodic status checks to determine if suspension remains appropriate. Action on this application is suspended pending the disposition of:

- Cancellation of Cited Mark.

The proceeding(s) above pertains to one or more of the following: (1) a registration cited as a bar to applicant's registration under Section 2(d) of the Trademark Act, (2) a pending application(s) that could present a future bar to registration under Section 2(d) if it matured into a registration, and/or (3) the registrability of applicant's mark. 15 U.S.C. §1052. Therefore, action is suspended pending the final disposition of this proceeding(s). See 37 C.F.R. §2.83; TMEP §§716.02(a), (c) and (d), 1208 et seq. Any refusal(s) made under Section 2 is herein maintained.

The following refusal(s)/requirement(s) is/are continued and maintained:

- Trademark Act Section 2(d) Refusal to Register

/Laurie R. Kaufman/
Trademark Examining Attorney
Law Office 103
Phone: 571.272.8913
Fax: 571.273.8913

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

OVERVIEW

SERIAL NUMBER	78791467	FILING DATE	01/13/2006
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	KAUFMAN, LAURIE R	L.O. ASSIGNED	103

PUB INFORMATION

RUN DATE	10/18/2007		
PUB DATE	N/A		
STATUS	649-ACTION CONTINUING FINAL - MAILED		
STATUS DATE	10/04/2007		
LITERAL MARK ELEMENT	I PLAY.		
DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPUB 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

FILING BASIS

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	YES	1 (a)	YES	1 (a)	NO
1 (b)	NO	1 (b)	NO	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

MARK DATA

STANDARD CHARACTER MARK	YES
LITERAL MARK ELEMENT	I PLAY.
MARK DRAWING CODE	4-STANDARD CHARACTER MARK
COLOR DRAWING FLAG	NO

CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	Family Clubhouse, Incorporated d/b/a i play
ADDRESS	2000 Riverside Drive, Unit 9 Asheville, NC 28804
ENTITY	03-CORPORATION
CITIZENSHIP	North Carolina

GOODS AND SERVICES

INTERNATIONAL CLASS	025
DESCRIPTION TEXT	children's and infants' cloth bibs; children's headwear; infantwear; non-disposable swim diapers

GOODS AND SERVICES CLASSIFICATION

MISCELLANEOUS INFORMATION/STATEMENTS

CHANGE IN REGISTRATION

NO

PROSECUTION HISTORY

DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM
10/17/2007	TEME	I	TEAS/EMAIL CORRESPONDENCE ENTERED	019
10/17/2007	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	018
10/17/2007	ERFR	I	TEAS REQUEST FOR RECONSIDERATION RECEIVED	017
10/04/2007	CNCF	O	CONTINUATION OF FINAL REFUSAL MAILED	016
10/03/2007	CNCF	R	ACTION CONTINUING A FINAL - COMPLETED	015
09/13/2007	TEME	I	TEAS/EMAIL CORRESPONDENCE ENTERED	014
09/12/2007	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	013
09/12/2007	ERFR	I	TEAS REQUEST FOR RECONSIDERATION RECEIVED	012
04/26/2007	CNFR	O	FINAL REFUSAL MAILED	011
04/25/2007	CNFR	R	FINAL REFUSAL WRITTEN	010
02/08/2007	ACEC	I	AMENDMENT FROM APPLICANT ENTERED	009
02/08/2007	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	008
02/08/2007	ALIE	A	ASSIGNED TO LIE	007
01/16/2007	MAIL	I	PAPER RECEIVED	006
07/10/2006	CNRT	F	NON-FINAL ACTION MAILED	005
07/10/2006	CNRT	R	NON-FINAL ACTION WRITTEN	004
06/30/2006	DOCK	D	ASSIGNED TO EXAMINER	003
06/30/2006	DOCK	D	ASSIGNED TO EXAMINER	002
01/19/2006	NWAP	I	NEW APPLICATION ENTERED IN TRAM	001

CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	Steven C. Schnedler
CORRESPONDENCE ADDRESS	STEVEN C. SCHNEDLER CARTER SCHNEDLER & MONTEITH, P.A. PO BOX 2985 ASHEVILLE, NC 28802-2985
DOMESTIC REPRESENTATIVE	NONE

I PLAY.

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	78791467
LAW OFFICE ASSIGNED	LAW OFFICE 103
MARK SECTION (no change)	
ARGUMENT(S)	
<u>SUSPENSION REQUEST</u>	
In the Final Action mailed April 26, 2007, registration was refused under Trademark Act Section 2(d) on the asserted basis of likelihood of confusion with the mark of Registration No. 2,923,675. In an Office Action mailed October 4, 2007, the final refusal was continued.	
Accordingly, on October 16, 2007, applicant filed with the Trademark Trial and Appeal Board a petition to cancel Registration No. 2,923,675. The Electronic System for Trademark Trials and Appeals was employed for this filing, and tracking number ESTTA168936 was assigned.	
Accordingly, it is requested that proceedings in the subject application be suspended pending the outcome of the cancellation proceeding.	
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Steven C. Schnedler/
SIGNATORY'S NAME	Steven C. Schnedler
SIGNATORY'S POSITION	Attorney of record
DATE SIGNED	10/17/2007
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
FILING INFORMATION SECTION	
SUBMIT DATE	Wed Oct 17 11:14:37 EDT 2007
TEAS STAMP	USPTO/RFR-70.144.96.249-2 0071017111437652097-78791 467-40087780bd6597b04e9d6 756d4cb8c9e3e-N/A-N/A-200 71017111102939899

PTT Form 105a (Rev 01/2017)
USPTO Trademark Office (http://www.uspto.gov)

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. **78791467** has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

SUSPENSION REQUEST

In the Final Action mailed April 26, 2007, registration was refused under Trademark Act Section 2(d) on the asserted basis of likelihood of confusion with the mark of Registration No. 2,923,675. In an Office Action mailed October 4, 2007, the final refusal was continued.

Accordingly, on October 16, 2007, applicant filed with the Trademark Trial and Appeal Board a petition to cancel Registration No. 2,923,675. The Electronic System for Trademark Trials and Appeals was employed for this filing, and tracking number ESTTA168936 was assigned.

Accordingly, it is requested that proceedings in the subject application be suspended pending the outcome of the cancellation proceeding.

Request for Reconsideration Signature

Signature: /Steven C. Schnedler/ Date: 10/17/2007

Signatory's Name: Steven C. Schnedler

Signatory's Position: Attorney of record

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 78791467

Internet Transmission Date: Wed Oct 17 11:14:37 EDT 2007

TEAS Stamp: USPTO/RFR-70.144.96.249-2007101711143765

2097-78791467-40087780bd6597b04e9d6756d4

cb8c9e3e-N/A-N/A-2007101711102939899

MARK: I PLAY.

78791467

CORRESPONDENT ADDRESS:

STEVEN C. SCHNEDLER
CARTER SCHNEDLER & MONTEITH, P.A.
PO BOX 2985
ASHEVILLE, NC 28802-2985

RESPOND TO THIS ACTION:

<http://www.uspto.gov/teas/eTEASpageD.htm>

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/main/trademarks.htm>

-

APPLICANT: Family Clubhouse, Incorporated d/b/a i p
ETC.

CORRESPONDENT'S REFERENCE/DOCKET NO:

IPLAY-2

CORRESPONDENT E-MAIL ADDRESS:

OFFICE ACTION

ISSUE/MAILING DATE:

The trademark examining attorney has carefully reviewed the request for reconsideration and is not persuaded by applicant's arguments. No new issue has been raised and no new compelling evidence has been presented with regard to the point(s) at issue in the final action. TMEP §715.03(a). Therefore, the request for reconsideration is **denied** and the final refusal is continued. 37 C.F.R. §2.64(b); TMEP §715.04.

The filing of a request for reconsideration does *not* extend the time for filing a proper response to the final action, which runs from the date the final action was mailed. 37 C.F.R. §2.64(b); TMEP §§715.03 and 715.03(c).

Consent Agreement Unacceptable – Naked Consent

The consent agreement submitted is considered a “naked consent” and thus is not acceptable to obviate a likelihood of confusion refusal because it does not set forth reasons why the parties believe there is no likelihood of confusion, nor does it set forth the arrangements undertaken by the parties to avoid confusing the public. *In re Permagrain Products, Inc.*, 223 USPQ 147 (TTAB 1984) (consent agreement found to be “naked” because the agreement did not restrict the markets in such a way as to avoid confusion). Moreover, registrant merely provides permission for applicant to *use the mark*, and does not provide consent to applicant to *register* the mark.

If applicant wishes to submit a proper consent agreement from the registrant consenting to the registration of the mark, this refusal will be reconsidered. Please note that consent agreements are but one factor to be taken into account with all of the other relevant circumstances bearing on the likelihood of confusion referred to in §2(d). *In re N.A.D. Inc.*, 754 F.2d 996, 224 USPQ 969, 971 (Fed. Cir. 1985); TMEP §1207.01(d)(viii).

Factors to be considered in weighing a consent agreement include: whether the agreement is unilateral or bilateral; whether the parties agree that no confusion exists; whether the trade channels of the respective goods are related and a statement indicating a clear indication of the respective, separate trade channels; whether the parties will make efforts to prevent confusion, and cooperate and take steps to avoid any confusion that may arise in the future; and whether the marks have been used for a period of time without evidence of actual confusion. *See In re Mastic*, 829 F.2d 1114, 1115, 4 USPQ2d 1292, 1294 (Fed. Cir. 1987) (relying on the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563 (C.C.P.A. 1973)).

Response

If the applicant has questions about its application or needs assistance in responding to this Office action, please telephone the assigned trademark examining attorney directly at the number below.

/Laurie R. Kaufman/
Trademark Examining Attorney
Law Office 103
Ph: 571.272.8913
Fx: 571.273.9103

RESPOND TO THIS ACTION: If there are any questions about the Office action, please contact the assigned examining attorney. A

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

OVERVIEW

SERIAL NUMBER	78791467	FILING DATE	01/13/2006
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	KAUFMAN, LAURIE R	L.O. ASSIGNED	103

PUB INFORMATION

RUN DATE	09/14/2007		
PUB DATE	N/A		
STATUS	645-FINAL REFUSAL - MAILED		
STATUS DATE	04/26/2007		
LITERAL MARK ELEMENT	I PLAY.		
DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPUB 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

FILING BASIS

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	YES	1 (a)	YES	1 (a)	NO
1 (b)	NO	1 (b)	NO	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

MARK DATA

STANDARD CHARACTER MARK	YES
LITERAL MARK ELEMENT	I PLAY.
MARK DRAWING CODE	4-STANDARD CHARACTER MARK
COLOR DRAWING FLAG	NO

CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	Family Clubhouse, Incorporated d/b/a i play
ADDRESS	2000 Riverside Drive, Unit 9 Asheville, NC 28804
ENTITY	03-CORPORATION
CITIZENSHIP	North Carolina

GOODS AND SERVICES

INTERNATIONAL CLASS	025
DESCRIPTION TEXT	children's and infants' cloth bibs; children's headwear; infantwear; non-disposable swim diapers

GOODS AND SERVICES CLASSIFICATION

MISCELLANEOUS INFORMATION/STATEMENTS

CHANGE IN REGISTRATION

NO

PROSECUTION HISTORY

DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM
09/13/2007	TEME	I	TEAS/EMAIL CORRESPONDENCE ENTERED	014
09/12/2007	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	013
09/12/2007	ERFR	I	TEAS REQUEST FOR RECONSIDERATION RECEIVED	012
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04/25/2007	CNFR	R	FINAL REFUSAL WRITTEN	010
02/08/2007	ACEC	I	AMENDMENT FROM APPLICANT ENTERED	009
02/08/2007	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	008
02/08/2007	ALIE	A	ASSIGNED TO LIE	007
01/16/2007	MAIL	I	PAPER RECEIVED	006
07/10/2006	CNRT	F	NON-FINAL ACTION MAILED	005
07/10/2006	CNRT	R	NON-FINAL ACTION WRITTEN	004
06/30/2006	DOCK	D	ASSIGNED TO EXAMINER	003
06/30/2006	DOCK	D	ASSIGNED TO EXAMINER	002
01/19/2006	NWAP	I	NEW APPLICATION ENTERED IN TRAM	001

CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	Steven C. Schnedler
CORRESPONDENCE ADDRESS	STEVEN C. SCHNEDLER CARTER SCHNEDLER & MONTEITH, P.A. PO BOX 2985 ASHEVILLE, NC 28802-2985
DOMESTIC REPRESENTATIVE	NONE

I PLAY.

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	78791467
LAW OFFICE ASSIGNED	LAW OFFICE 103
MARK SECTION (no change)	
ARGUMENT(S)	
<p>This is in response to the Final Action mailed April 26, 2007, which maintains the Section 2(d) refusal in view of Reg. No. 2,923,675, owned by International Playthings, Inc.</p> <p>In response, a "Trademark Co-Existence and Consent Agreement" has been entered into with the owner of Reg. No. 2,923,675. A copy is submitted herewith.</p> <p>The "Trademark Co-Existence and Consent Agreement" was carefully drafted in view of TMEP 1207.01(d)(viii), and the cases there cited, including <i>In re E. I. Du Pont de Nemours & Co.</i>, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). It is submitted that the Consent Agreement is well sufficient to overcome the Section 2(d) refusal.</p> <p>For the record, in the Office Action mailed April 26, 2007, the trademark examining attorney characterizes applicant's previous argument as follows: "Applicant argues that no likelihood of confusion exists between the proposed mark and cited mark because similar marks previously co-existed on the Principal Register." That is not exactly what applicant previously argued. Rather, applicant pointed out that, when the currently-cited Reg. No. 2,923,675 was a pending application, the examiner in that case did <u>not</u> find a likelihood of confusion in view of the current applicant's then-active earlier Reg. No. 2,115,786. It was requested that the Office apply a consistent standard. Applicant did not previously <u>argue</u> that no likelihood of confusion exists. In the event the current "Trademark Co-Existence and Consent Agreement" is not accepted by the trademark examining attorney as sufficient to overcome the Section 2(d) refusal in the subject application, applicant is not precluded from initiating a cancellation proceeding against Reg. No. 2,923,675.</p> <p>In view of the foregoing, it is requested that the subject application now be approved for publication.</p>	
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_7422720592-125342437_._IPLAY-1-2_Agreement.pdf
CONVERTED PDF FILE(S) (4 pages)	\\TICRS2\EXPORT14\787\914\78791467\xml1\RFR0002.JPG
	\\TICRS2\EXPORT14\787\914\78791467\xml1\RFR0003.JPG
	\\TICRS2\EXPORT14\787\914\78791467\xml1\RFR0004.JPG
	\\TICRS2\EXPORT14\787\914\78791467\xml1\RFR0005.JPG
DESCRIPTION OF EVIDENCE FILE	"Trademark Co-Existence and Consent Agreement"
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Steven C. Schnedler/
SIGNATORY'S NAME	Steven C. Schnedler
SIGNATORY'S POSITION	Attorney of record
DATE SIGNED	09/12/2007
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
FILING INFORMATION SECTION	
SUBMIT DATE	Wed Sep 12 13:01:11 EDT 2007
TEAS STAMP	USPTO/RFR-74.227.205.92-2 0070912130111070699-78791 467-40041ef3323630d2ba7b4 afddccdd3f5d0-N/A-N/A-200 70912125342437766

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. **78791467** has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

This is in response to the Final Action mailed April 26, 2007, which maintains the Section 2(d) refusal in view of Reg. No. 2,923,675, owned by International Playthings, Inc.

In response, a "Trademark Co-Existence and Consent Agreement" has been entered into with the owner of Reg. No. 2,923,675. A copy is submitted herewith.

The "Trademark Co-Existence and Consent Agreement" was carefully drafted in view of TMEP 1207.01(d)(viii), and the cases there cited, including *In re E. I. Du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). It is submitted that the Consent Agreement is well sufficient to overcome the Section 2(d) refusal.

For the record, in the Office Action mailed April 26, 2007, the trademark examining attorney characterizes applicant's previous argument as follows: "Applicant argues that no likelihood of confusion exists between the proposed mark and cited mark because similar marks previously co-existed on the Principal Register." That is not exactly what applicant previously argued. Rather, applicant pointed out that, when the currently-cited Reg. No. 2,923,675 was a pending application, the examiner in that case did not find a likelihood of confusion in view of the current applicant's then-active earlier Reg. No. 2,115,786. It was requested that the Office apply a consistent standard. Applicant did not previously argue that no likelihood of confusion exists. In the event the current "Trademark Co-Existence and Consent Agreement" is not accepted by the trademark examining attorney as sufficient to overcome the Section 2(d) refusal in the subject application, applicant is not precluded from initiating a cancellation proceeding against Reg. No. 2,923,675.

In view of the foregoing, it is requested that the subject application now be approved for publication.

EVIDENCE

Evidence in the nature of "Trademark Co-Existence and Consent Agreement" has been attached.

Original PDF file:

evi_7422720592-125342437_.IPLAY-1-2_Agreement.pdf

Converted PDF file(s) (4 pages)

Evidence-1

Evidence-2

Evidence-3

Evidence-4

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Steven C. Schnedler/ Date: 09/12/2007

Signatory's Name: Steven C. Schnedler

Signatory's Position: Attorney of record

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 78791467

Internet Transmission Date: Wed Sep 12 13:01:11 EDT 2007

TEAS Stamp: USPTO/RFR-74.227.205.92-2007091213011107

0699-78791467-40041ef3323630d2ba7b4afddc

cdd3f5d0-N/A-N/A-20070912125342437766

TRADEMARK CO-EXISTENCE AND CONSENT AGREEMENT

This Trademark Co-Existence and Consent Agreement ("Agreement"), entered into as of the 31st day of August, 2007, is between Family Clubhouse Incorporated d/b/a iplay (hereinafter "Family Clubhouse"), a corporation organized and existing under the laws of the State of North Carolina and having a principal place of business at 2000 Riverside Drive, Unit 9, Asheville, North Carolina 28804; and International Playthings, Inc. (hereinafter "IPI") formerly called IPI Acquisition Corp., a corporation organized and existing under the laws of the State of New Jersey, with a principal place of business at 75D Lackawanna Avenue, Parsippany, New Jersey 07054. Both Family Clubhouse and IPI are sometimes referred to herein as a "Party" and, collectively, as the "Parties."

I. BACKGROUND

A. Family Clubhouse is a baby wear company, and has been in the business of designing, producing and selling clothing and accessories for infants and young children for more than 20 years. An internet website for Family Clubhouse is www.ipplaybabywear.com.

B. International Playthings, Inc. is in the business of designing, producing and selling "award-winning toys for kids of all ages," and has been in business for 30 years. An internet website for International Playthings is www.intplay.com. International Playthings, Inc. has assigned certain trademark rights to IPI Acquisition Corp. which later changed its name to International Playthings, Inc.

C. Family Clubhouse was the owner of federal trademark Registration No. 2,115,786 of I PLAY. (plus design) as a trademark for *non-disposable swim diapers*, in International Class 25, claiming a date of first use of February 8, 1996. That registration was granted November 25,

1997. On February 10, 2005, a Final Decision and Cancellation Order was mailed, and Reg. No. 2,115,786 lapsed because an acceptable Section 8 Declaration had not been timely filed.

D. On December 5, 2001, International Playthings, Inc., a predecessor in interest of IPI, filed application Serial No. 76-344,977 for registration of I PLAY. (plus design). That mark was registered February 1, 2005 as Reg. No. 2,923,675, with a claimed date of first use of February 2, 2002. The identified goods are *educational toys, namely, stacking toys, rattles, blocks, rings and hammer and peg toys; bath toys; pretend play toys, namely, purse and make up sets, fishing reels and rod and fake fish sets, kitchen sets, and doctor kits; sand box toys; water and outdoor toys, namely, buckets, shovels, sand molds, sieves, sand mills and squirt toys; sport toys, namely, hula hoops, jump ropes, baseball bat and ball sets and soccer balls; games, namely, board games, card games and plastic action games; puzzles, namely, jigsaw puzzles, manipulative and cube type puzzles*, in International Class 28. By an assignment executed February 28, 2005 and recorded March 11, 2005, Reg. No. 2,923,675 was assigned to IPI Acquisition Corp. On March 2, 2005, IPI Acquisition Corp. changed its name to International Playthings, Inc.

E. On January 13, 2006, Family Clubhouse filed two replacement applications, for registration of I PLAY. (plus design) and of I PLAY., as trademarks for *children's and infants' cloth bibs; children's headwear; infantwear; and non-disposable swim diapers*, in International Class 25, claiming a date of first use of February 8, 1996. The applications were assigned Serial Nos. 78/791,447 and 78/791,467. In Office Actions mailed April 26, 2007, both of those applications were finally refused by the trademark examining attorney under Section 2(d) of the Trademark Act on the asserted basis of likelihood of confusion in view of Reg. No. 2,923,675.

F. Rather than initiate an action seeking cancellation of IPI's Reg. No. 2,923,675, Family Clubhouse has contacted IPI, through counsel, about co-existing in the marketplace. The Parties desire to settle this matter, and to enter into this agreement.

II. COEXISTENCE

A. The Parties are of the view that there is no likelihood of confusion because, among other things, the respective goods are different, the goods of the two Parties are sold in different markets and through different channels of trade, and the Parties are not aware of any instances of actual confusion.

B. Moreover, based on current information from the U.S. Patent and Trademark Office TARR and TDR databases, International Playthings, Inc.'s then-pending application No. 76/344,977 which matured into Reg. No. 2,923,675 was approved for publication on October 14, 2002, at which time Family Clubhouse's earlier Reg. No. 2,115,786 (registered November 25, 1997) was an active registration. There is no indication in the file of Reg. No. 2,923,675 that the trademark examining attorney in that case made an issue of Reg. No. 2,115,786, and accordingly did not find a likelihood of confusion.

III. AGREEMENT

A. Subject to paragraph III. B. below, IPI consents to Family Clubhouse's registration of the marks of Serial Nos. 78/791,447 and 78/791,467. Subject to paragraph III. B. below, Family Clubhouse agrees that it will not initiate a cancellation proceeding against Reg. No. 2,923,675.

B. In the event the USPTO maintains the Section 2(d) refusals in either or both of application Serial Nos. 78/791,447 and 78/791,467 in view of Reg. No. 2,923,675 notwithstanding the submission of this Agreement, the Parties' consents and agreements under

paragraph III. A. above are nullified, Family Clubhouse may initiate a cancellation proceeding against Reg. No. 2,923,675, IPI may set out any defenses as it sees fit, and no part of this Agreement may be referred to or relied upon to the contrary.

III. AVOIDANCE OF CONFUSION

The Parties hereto agree that they will make efforts to prevent confusion, and to cooperate and take steps to avoid any confusion that may arise in the future.

This Agreement shall be binding upon and inure to the benefit of the Parties, their successors, assigns, subsidiaries, licensees, affiliated companies, and all those acting in concert or participation with them.

IN WITNESS WHEREOF, the Parties have, with all the necessary corporate authority, duly executed this consent agreement as of the date first written above.

FAMILY CLUBHOUSE INCORPORATED

Signature: Becky Cannon

Name: Becky Cannon

Title: President

Date: 9/11/07

INTERNATIONAL PLAYTHINGS, INC.

Signature: Michael Vardas

Name: Michael Vardas

Title: CEO

Date: 8/31/2007

SERIAL NO: 78/791467

APPLICANT: Family Clubhouse, Incorporated d/b/a i p ETC.

78791467

CORRESPONDENT ADDRESS:

STEVEN C. SCHNEDLER
CARTER SCHNEDLER & MONTEITH, P.A.
PO BOX 2985
ASHEVILLE, NC 28802-2985

RETURN ADDRESS:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

MARK: I PLAY.

CORRESPONDENT'S REFERENCE/DOCKET NO: IPLAY-2

CORRESPONDENT EMAIL ADDRESS:

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

RESPONSE TIME LIMIT: TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE MAILING OR E-MAILING DATE.

MAILING/E-MAILING DATE INFORMATION: If the mailing or e-mailing date of this Office action does not appear above, this information can be obtained by visiting the USPTO website at <http://tarr.uspto.gov/>, inserting the application serial number, and viewing the prosecution history for the mailing date of the most recently issued Office communication.

Serial Number 78/791467

THIS IS A FINAL ACTION

This letter responds to the applicant's communication filed on January 16, 2007.

In the applicant's communication filed on January 16, 2007, the applicant (1) submitted arguments in favor of registration, contesting the refusal to register under Section 2(d) of the Trademark Act; and (2) deleted the prior claim of ownership of U.S. Reg. No. 2115786 for the purpose of printing on the registration certificate.

The following requirement has been satisfied and is now withdrawn: Deletion of Prior Registration Claim. TMEP §714.04.

For the reasons set forth below, the refusal under Trademark Act Section 2(d), 15 U.S.C. §1052(d), is now made **FINAL** with respect to U.S. Registration No. 2923675. 37 C.F.R. §2.64(a).

Trademark Act Section 2(d) Refusal – Likelihood of Confusion

The Court in *In re E. I. Du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973), listed the principal factors to be considered in determining whether there is a likelihood of confusion under Section 2(d). Any one of the factors listed may be dominant in any given case, depending upon the evidence of record. *In re Dixie Restaurants, Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997); In this case, the following factors are the most relevant: similarity of the marks, similarity of the goods and/or services, and similarity of trade channels of the goods and/or services. *See In re Opus One, Inc.*, 60 USPQ2d 1812 (TTAB 2001); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593 (TTAB 1999); *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999); *In re L.C. Licensing Inc.*, 49 USPQ2d 1379 (TTAB 1998); TMEP §§1207.01 *et seq.*

Taking into account the relevant *Du Pont* factors, a likelihood of confusion determination in this case involves a two-part analysis. First, the marks are compared for similarities in appearance, sound, connotation and commercial impression. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Second, the goods or services are compared to determine whether they are similar or related or whether the activities surrounding their marketing are such that confusion as to origin is likely. *In re National Novice Hockey League, Inc.*, 222 USPQ 638 (TTAB 1984); *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re Int'l Tel. and Tel. Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Prods. Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); TMEP §§1207.01 *et seq.*

Comparison of the Marks

The marks are compared for similarities in sound, appearance, meaning or connotation. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Similarity in any one of these elements may be sufficient to find a likelihood of confusion. *In re White Swan*

the applicant's mark, **PLAY**., is nearly identical to the literal portion of the registrant's mark, **PLAY**, in sound, appearance, meaning and connotation. The only difference between the applicant's mark and the literal portion of the registrant's mark is that the applicant has included a period following the word **PLAY**. The addition of the period is minor and does not significantly alter the appearance of the mark. When applicant's mark is compared to a registered mark, "the points of similarity are of greater importance than the points of difference." *Esso Standard Oil Co. v. Sun Oil Co.*, 229 F.2d 37, 40, 108 USPQ 161 (D.C. Cir. 1956) (internal citation omitted).

Secondly, although the registrant's mark contains a design element and the applicant's mark is presented in standard character form, this difference does not obviate the similarity between the marks. When a mark consists of a word portion and a design portion, the word portion is more likely to be impressed upon a purchaser's memory and to be used in calling for the goods or services. Therefore, the word portion is normally accorded greater weight in determining likelihood of confusion. *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593, 1596 (TTAB 1999); *In re Appetito Provisions Co.*, 3 USPQ2d 1553 (TTAB 1987); *Amoco Oil Co. v. Amerco, Inc.*, 192 USPQ 729 (TTAB 1976); TMEP §1207.01(c)(ii). Because the literal portions of both marks are nearly identical in appearance, sound and meaning, the addition of the design element does not obviate the similarity between the marks in this case. *In re Shell Oil Company*, 992 F.2d 1204, 26 USPQ2d 1687 (Fed. Cir. 1993); *Coca-Cola Bottling Co. v. Joseph E. Seagram & Sons, Inc.*, 526 F.2d 556, 188 USPQ 105 (C.C.P.A. 1975); TMEP §1207.01(c)(ii).

Where the marks of the respective parties are identical or highly similar, then the commercial relationship between the goods or services of the respective parties must be analyzed carefully to determine whether there is a likelihood of confusion. *In re Opus One Inc.*, 60 USPQ2d 1812, 1815 (TTAB 2001); *In re Concordia Int'l Forwarding Corp.*, 222 USPQ 355 (TTAB 1983); TMEP §1207.01(a).

Comparison of the Goods and/or Services

The goods and/or services of the parties need not be identical or directly competitive to find a likelihood of confusion. Instead, they need only be related in some manner, or the conditions surrounding their marketing are such that they would be encountered by the same purchasers under circumstances that would give rise to the mistaken belief that the goods and/or services come from a common source. *On-line Careline Inc. v. America Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471 (Fed. Cir. 2000); *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984); *Guardian Prods. Co., Inc. v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); *In re Int'l Tel. & Tel. Corp.*, 197 USPQ 910 (TTAB 1978); TMEP §1207.01(a)(i).

The applicant's goods are "children's and infants' cloth bibs; children's headwear; infantwear; non-disposable swim diapers" in International Class 025. The registrant's goods are "educational toys, namely, stacking toys, rattles, blocks, rings and hammer and peg toys; bath toys; pretend play toys, namely, purse and make up sets, fishing reels and rod and fake fish sets, kitchen sets, and doctor kits; sand box toys; water and outdoor toys, namely, buckets, shovels, sand molds, sieves, sand mills and squirt toys; sport toys, namely, hula hoops, jump ropes, baseball bat and ball sets and soccer balls; games, namely, board games, card games and plastic action games; puzzles, namely, jigsaw puzzles, manipulative and cube type puzzles" in International Class 028.

Both the applicant and registrant's goods are geared toward infants and young children and are frequently sold through the same channels of trade. In the initial Office action, the examining attorney attached various Internet websites that showed retail stores that featured and sold both the applicant and registrant's goods. The examining attorney concluded that because the marks are similar and the goods are related, it is likely that consumers would believe that the goods emanate from a common source.

Applicant argues that no likelihood of confusion exists between the proposed mark and cited mark because similar marks previously co-existed on the Principal Register. Applicant notes that the Office approved the cited registration for publication on October 14, 2002, at which time the applicant's earlier registration (Reg. No. 2115786 – registered November 25, 1997; cancelled February 11, 2005), was an active registration, and, there is no indication in the file of Reg. No. 2923675 that the examining attorney in that case made an issue of Reg. No. 2115786.

Prior decisions and actions of other trademark examining attorneys in registering different marks are without evidentiary value and are not binding upon the Office. Each case is decided on its own facts, and each mark stands on its own merits. *AMF Inc. v. American Leisure Products, Inc.*, 177 USPQ 268, 269 (C.C.P.A. 1973); *In re International Taste, Inc.*, 53 USPQ2d 1604 (TTAB 2000); *In re Sunmarks Inc.*, 32 USPQ2d 1470 (TTAB 1994); *In re National Novice Hockey League, Inc.*, 222 USPQ 638, 641 (TTAB 1984); *In re Consolidated Foods Corp.*, 200 USPQ 477 (TTAB 1978).

However, the applicant's cancelled registration is *not* identical to the present application. Cancelled Registration No. 2115786 included a design element and a more limited scope of goods than that of the present application ("non-disposable swim diapers" in International Class 025 ONLY).

Priority of Use Not Relevant in Ex Parte Proceeding

Applicant's claim of priority of use is not relevant to this *ex parte* proceeding. *In re Calgon Corp*, 435 F.2d 596, 168 USPQ 278 (C.C.P.A. 1971). Section 7(b) of the Trademark Act, 15 U.S.C. §1057(b), provides that a certificate of registration on the Principal Register is *prima facie* evidence of the validity of the registration, of the registrant's ownership of the mark and of the registrant's exclusive right to use the mark in commerce in connection with the goods or services specified in the certificate. During *ex parte* prosecution, the trademark examining attorney has no authority to review or decide on matters that constitute a collateral attack on the cited registration. TMEP §1207.01(d)(iv).

Conclusion

If applicant fails to respond to this final action within six months of the mailing date, the application will be abandoned. 15 U.S.C. §1062(b); 37 C.F.R. §2.65(a). Applicant may respond to this final action by:

- (1) submitting a response that fully satisfies all outstanding requirements, if feasible (37 C.F.R. §2.64(a)); and/or
- (2) filing an appeal to the Trademark Trial and Appeal Board, with an appeal fee of \$100 per class (37 C.F.R. §§2.6(a)(18) and 2.64(a); TMEP §§715.01 and 1501 *et seq.*; TBMP Chapter 1200).

In certain circumstances, a petition to the Director may be filed to review a final action that is limited to procedural issues, pursuant to 37 C.F.R. §2.63(b)(2). 37 C.F.R. §2.64(a). *See* 37 C.F.R. §2.146(b), TMEP §1704, and TBMP Chapter 1201.05 for an explanation of petitionable matters. The petition fee is \$100. 37 C.F.R. §2.6(a)(15).

/Laurie R. Kaufman/
Trademark Examining Attorney
Law Office 103
Ph: 571.272.8913
Fx: 571.273.9103

HOW TO RESPOND TO THIS OFFICE ACTION:

- **ONLINE RESPONSE:** You may respond using the Office's Trademark Electronic Application System (TEAS) Response to Office action form available on our website at <http://www.uspto.gov/teas/index.html>. If the Office action issued via e-mail, you must wait 72 hours after receipt of the Office action to respond via TEAS. **NOTE: Do not respond by e-mail. THE USPTO WILL NOT ACCEPT AN E-MAILED RESPONSE.**
- **REGULAR MAIL RESPONSE:** To respond by regular mail, your response should be sent to the mailing return address above, and include the serial number, law office number, and examining attorney's name. **NOTE: The filing date of the response will be the date of receipt in the Office,** not the postmarked date. To ensure your response is timely, use a certificate of mailing. 37 C.F.R. §2.197.

STATUS OF APPLICATION: To check the status of your application, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov>.

VIEW APPLICATION DOCUMENTS ONLINE: Documents in the electronic file for pending applications can be viewed and downloaded online at <http://portal.uspto.gov/external/portal/tow>.

GENERAL TRADEMARK INFORMATION: For general information about trademarks, please visit the Office's website at <http://www.uspto.gov/main/trademarks.htm>

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY SPECIFIED ABOVE.

OVERVIEW

SERIAL NUMBER	78791467	FILING DATE	01/13/2006
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	KAUFMAN, LAURIE R	L.O. ASSIGNED	103

PUB INFORMATION

RUN DATE	02/09/2007		
PUB DATE	N/A		
STATUS	661-RESPONSE AFTER NON-FINAL-ACTION-ENTERED		
STATUS DATE	02/08/2007		
LITERAL MARK ELEMENT	I PLAY.		
DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPUB 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

FILING BASIS

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	YES	1 (a)	YES	1 (a)	NO
1 (b)	NO	1 (b)	NO	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

MARK DATA

STANDARD CHARACTER MARK	YES
LITERAL MARK ELEMENT	I PLAY.
MARK DRAWING CODE	4-STANDARD CHARACTER MARK
COLOR DRAWING FLAG	NO

CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	Family Clubhouse, Incorporated d/b/a i play
ADDRESS	2000 Riverside Drive, Unit 9 Asheville, NC 28804
ENTITY	03-CORPORATION
CITIZENSHIP	North Carolina

GOODS AND SERVICES

INTERNATIONAL CLASS	025
DESCRIPTION TEXT	children's and infants' cloth bibs; children's headwear; infantwear; non-disposable swim diapers

GOODS AND SERVICES CLASSIFICATION

MISCELLANEOUS INFORMATION/STATEMENTS

CHANGE IN REGISTRATION

NO

PROSECUTION HISTORY

DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM
02/08/2007	ACEC	I	AMENDMENT FROM APPLICANT ENTERED	009
02/08/2007	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	008
02/08/2007	ALIE	A	ASSIGNED TO LIE	007
01/16/2007	MAIL	I	PAPER RECEIVED	006
07/10/2006	CNRT	F	NON-FINAL ACTION MAILED	005
07/10/2006	CNRT	R	NON-FINAL ACTION WRITTEN	004
06/30/2006	DOCK	D	ASSIGNED TO EXAMINER	003
06/30/2006	DOCK	D	ASSIGNED TO EXAMINER	002
01/19/2006	NWAP	I	NEW APPLICATION ENTERED IN TRAM	001

CURRENT CORRESPONDENCE INFORMATION

ATTORNEY

Steven C. Schnedler

CORRESPONDENCE ADDRESS

STEVEN C. SCHNEDLER
CARTER SCHNEDLER & MONTEITH, P.A.
PO BOX 2985
ASHEVILLE, NC 28802-2985

DOMESTIC REPRESENTATIVE

NONE

I PLAY.



Docket No. IPLAY-2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Trademark Application of	:	Law Office 103
	:	
Family Clubhouse, Incorporated	:	Trademark Attorney:
d/b/a i play	:	Laurie R. Kaufman
	:	
Serial No.: 78/791,467	:	
	:	
Filed: January 13, 2006	:	Response to Action
	:	No. 1
	:	
Mark: I PLAY.	:	
	:	

Asheville, North Carolina
January 10, 2007RESPONSECommissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

01-16-2007

Sir:

U.S. Patent & TMO/TM Mail Rpt Dt #30

This is in response to the Office Action mailed July 10, 2006 initially refusing registration on the asserted basis of likelihood of confusion under Section 2(d), and additionally, under the heading "Delete Prior Registration Claim," stating that applicant's claim of ownership of U.S. Registration No. 2,115,786 will not be printed on any registration which may issue from this application because Office records show that the claimed registration is cancelled.

In response to the implied requirement that the prior registration claim be deleted, please delete the prior claim of ownership of U.S. Reg. No. 2,115,786 for the purpose of printing on the registration certificate. However, the fact that

applicant is the owner of now-cancelled Reg. No. 2,115,786 should remain in the record of the subject application, for reasons discussed below under the heading "Trademark Act Section 2(d) Refusal."

Trademark Act Section 2(d) Refusal

Thus, registration is initially refused on the asserted basis of likelihood of confusion with the mark I PLAY (and bouncing ball design) of Reg. No. 2,923,675, for various educational toys.

In response, and at the outset, it is noted that applicant has priority of use, February 8, 1996, compared to a claimed date of use of February 2, 2002 for the cited Reg. No. 2,923,675.

Based on current information from the U.S. Patent and Trademark Office TARR and TDR databases, it is further noted that then-pending application No. 76/344,977 which matured into Reg. No. 2,923,675 was approved for publication on October 14, 2002, at which time applicant's earlier Reg. No. 2,115,786 (registered November 25, 1997) was clearly an active registration. There is no indication in the file of Reg. No. 2,923,675 that the Examining Attorney in that case made an issue of Reg. No. 2,115,786. Moreover, Reg. No. 2,923,675 was registered while applicant's earlier Reg. No. 2,115,786 technically was still in force.

To conclude, the Examining Attorney in currently cited Reg. No. 2,923,675 did not find a likelihood of confusion. The mark

of the subject application is identical to the mark of the word portion in Reg. No. 2,115,786. It is requested that the Office apply a consistent standard, and approve the subject application.

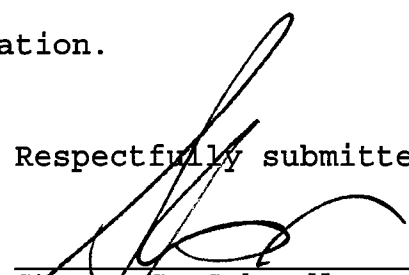
Otherwise, applicant will be forced to initiate a cancellation proceeding against Reg. No. 2,923,675, at substantial expense to both parties.

Although the list of identified goods in the subject application Serial No. 78/791,467 is more extensive than the identified goods "non-disposable swim diapers" in Reg. No. 2,115,786, "non-disposable swim diapers" are included in the identification of the subject application Serial No. 78/791,467, and the trademark examining attorney has not drawn any distinction between the various goods identified in the subject application.

Conclusion

In view of the foregoing, it is requested that the application be approved for publication.

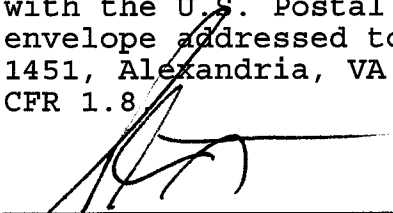
Respectfully submitted,



Steven C. Schnedler,
Attorney

Carter Schnedler & Monteith, P.A.
56 Central Avenue, Suite 101
P.O. Box 2985
Asheville, NC 28802
Telephone: (828) 252-6225

I hereby certify that this paper is being deposited this date with the U.S. Postal Service as First Class Mail in an envelope addressed to Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, under the provisions of 37 CFR 1.8


Steven C. Schnedler

January 10, 2006
Date

SERIAL NO: 78/791467

APPLICANT: Family Clubhouse, Incorporated d/b/a i p ETC.

78791467

CORRESPONDENT ADDRESS:

STEVEN C. SCHNEDLER
CARTER SCHNEDLER & MONTEITH, P.A.
PO BOX 2985
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RETURN ADDRESS:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

MARK: I PLAY.

CORRESPONDENT'S REFERENCE/DOCKET NO: IPLAY-2

CORRESPONDENT EMAIL ADDRESS:

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

RESPONSE TIME LIMIT: TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE MAILING OR E-MAILING DATE.

MAILING/E-MAILING DATE INFORMATION: If the mailing or e-mailing date of this Office action does not appear above, this information can be obtained by visiting the USPTO website at <http://tarr.uspto.gov/>, inserting the application serial number, and viewing the prosecution history for the mailing date of the most recently issued Office communication.

Serial Number 78/791467

The assigned trademark examining attorney has reviewed the referenced application and has determined the following:

Trademark Act Section 2(d) Refusal – Likelihood of Confusion

Registration of the proposed mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 2923675. Trademark Act Section 2(d), 15 U.S.C. §1052(d); TMEP §§1207.01 *et seq.* See the enclosed registration.

The Court in *In re E. I. Du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973), listed the principal factors to be considered in determining whether there is a likelihood of confusion under Section 2(d). Any one of the factors listed may be dominant in any given case, depending upon the evidence of record. *In re Dixie Restaurants, Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997); In this case, the following factors are the most relevant: similarity of the marks, similarity of the goods and/or services, and similarity of trade channels of the goods and/or services. See *In re Opus One, Inc.*, 60 USPQ2d 1812 (TTAB 2001); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593 (TTAB 1999); *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999); *In re L.C. Licensing Inc.*, 49 USPQ2d 1379 (TTAB 1998); TMEP §§1207.01 *et seq.*

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Comparison of the Marks

The marks are compared for similarities in sound, appearance, meaning or connotation. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Similarity in any one of these elements may be sufficient to find a likelihood of confusion. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1536 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1043 (TTAB 1987); *In re Mack*, 197 USPQ 755 (TTAB 1977); TMEP §1207.01(b).

The applicant's mark, I PLAY., is nearly identical to the literal portion of the registrant's mark, I PLAY, in sound, appearance, meaning and connotation. The only difference between the applicant's mark and the literal portion of the registrant's mark is that the applicant has included a period following the word PLAY. The addition of the period is minor and does not significantly alter the appearance of the mark. When applicant's mark is compared to a registered mark, "the points of similarity are of greater importance than the points of difference." *Esso Standard Oil Co. v. Sun Oil Co.*, 229 F.2d 37, 40, 108 USPQ 161 (D.C. Cir. 1956) (internal citation omitted).

is more likely to be impressed upon a purchaser's memory and to be used in calling for the goods or services. Therefore, the word portion is normally accorded greater weight in determining likelihood of confusion. *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593, 1596 (TTAB 1999); *In re Appetito Provisions Co.*, 3 USPQ2d 1553 (TTAB 1987); *Amoco Oil Co. v. Amerco, Inc.*, 192 USPQ 729 (TTAB 1976); TMEP §1207.01(c)(ii). Because the literal portions of both marks are nearly identical in appearance, sound and meaning, the addition of the design element does not obviate the similarity between the marks in this case. *In re Shell Oil Company*, 992 F.2d 1204, 26 USPQ2d 1687 (Fed. Cir. 1993); *Coca-Cola Bottling Co. v. Joseph E. Seagram & Sons, Inc.*, 526 F.2d 556, 188 USPQ 105 (C.C.P.A. 1975); TMEP §1207.01(c)(ii).

Comparison of the Goods

The goods and/or services of the parties need not be identical or directly competitive to find a likelihood of confusion. Instead, they need only be related in some manner, or the conditions surrounding their marketing are such that they would be encountered by the same purchasers under circumstances that would give rise to the mistaken belief that the goods and/or services come from a common source. *On-line Careline Inc. v. America Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471 (Fed. Cir. 2000); *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984); *Guardian Prods. Co., Inc. v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); *In re Int'l Tel. & Tel. Corp.*, 197 USPQ 910 (TTAB 1978); TMEP §1207.01(a)(i).

The applicant has applied to register the mark I PLAY. for the following goods "children's and infants' cloth bibs; children's headwear; infantwear; non-disposable swim diapers" in International Class 025. The registrant's goods include "EDUCATIONAL TOYS, NAMELY, STACKING TOYS, RATTLES, BLOCKS, RINGS AND HAMMER AND PEG TOYS; BATH TOYS; PRETEND PLAY TOYS, NAMELY, PURSE AND MAKE UP SETS, FISHING REELS AND ROD AND FAKE FISH SETS, KITCHEN SETS, AND DOCTOR KITS; SAND BOX TOYS; WATER AND OUTDOOR TOYS, NAMELY, BUCKETS, SHOVELS, SAND MOLDS, SIEVES, SAND MILLS AND SQUIRT TOYS; SPORT TOYS, NAMELY, HULA HOOPS, JUMP ROPES, BASEBALL BAT AND BALL SETS AND SOCCER BALLS; GAMES, NAMELY, BOARD GAMES, CARD GAMES AND PLASTIC ACTION GAMES; PUZZLES, NAMELY, JIGSAW PUZZLES, MANIPULATIVE AND CUBE TYPE PUZZLES" in International Class 028.

Both the applicant and registrant's marks are geared toward infants and young children. As evidenced by the attached Internet websites, the applicant and registrant's goods are sold in the same retail stores. Because the goods travel through the same channels of trade, it is likely that consumers would believe that the goods emanate from a common source.

Any doubt regarding a likelihood of confusion is resolved in favor of the prior registrant. *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988); TMEP §§1207.01(d)(i). Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

* * *

If applicant chooses to respond to the refusal(s) to register, then applicant must also respond to the following requirement(s).

Delete Prior Registration Claim

Applicant's claim of ownership of U.S. Registration No. 2115786 will not be printed on any registration which may issue from this application because Office records show that the claimed registration is cancelled. Only claims of ownership of live registrations are printed. 37 C.F.R. §2.36; TMEP §812.

Response

If the applicant has questions about its application or needs assistance in responding to this Office action, please telephone the assigned trademark examining attorney directly at the number below.

/Laurie R. Kaufman/
Trademark Examining Attorney
Law Office 103
Ph: 571.272.8913
Fx: 571.273.9103

HOW TO RESPOND TO THIS OFFICE ACTION:

- **ONLINE RESPONSE:** You may respond using the Office's Trademark Electronic Application System (TEAS) Response to Office action form available on our website at <http://www.uspto.gov/teas/index.html>. If the Office action issued via e-mail, you must wait 72 hours after receipt of the Office action to respond via TEAS. **NOTE: Do not respond by e-mail. THE USPTO WILL NOT ACCEPT AN E-MAILED RESPONSE.**
- **REGULAR MAIL RESPONSE:** To respond by regular mail, your response should be sent to the mailing return address above, and include the serial number, law office number, and examining attorney's name. **NOTE: The filing date of the response will be the date of receipt in the Office,** not the postmarked date. To ensure your response is timely, use a certificate of mailing. 37 C.F.R. §2.197.

VIEW APPLICATION DOCUMENTS ONLINE. Documents in the electronic file for pending applications can be viewed and downloaded online at <http://portal.uspto.gov/external/portal/tow>.

GENERAL TRADEMARK INFORMATION: For general information about trademarks, please visit the Office's website at <http://www.uspto.gov/main/trademarks.htm>

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY SPECIFIED ABOVE.

Print: Jun 30, 2006

76344977

DESIGN MARK

Serial Number

76344977

Status

REGISTERED

Word Mark

I-PLAY

Standard Character Mark

No

Registration Number

2923675

Date Registered

2005/02/01

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

IPI ACQUISITION CORP. CORPORATION DELAWARE 75D LACKAWANNA AVENUE
PARSIPPANY NEW JERSEY 07054

Goods/Services

Class Status -- ACTIVE. IC 028. US 022 023 038 050. G & S:
EDUCATIONAL TOYS, NAMELY, STACKING TOYS, RATTLES, BLOCKS, RINGS AND
HAMMER AND PEG TOYS; BATH TOYS; PRETEND PLAY TOYS, NAMELY, PURSE AND
MAKE UP SETS, FISHING REELS AND ROD AND FAKE FISH SETS, KITCHEN SETS,
AND DOCTOR KITS; SAND BOX TOYS; WATER AND OUTDOOR TOYS, NAMELY,
BUCKETS, SHOVELS, SAND MOLDS, SIEVES, SAND MILLS AND SQUIRT TOYS;
SPORT TOYS, NAMELY, HULA HOOPS, JUMP ROPES, BASEBALL BAT AND BALL SETS
AND SOCCER BALLS; GAMES, NAMELY, BOARD GAMES, CARD GAMES AND PLASTIC
ACTION GAMES; PUZZLES, NAMELY, JIGSAW PUZZLES, MANIPULATIVE AND CUBE
TYPE PUZZLES. First Use: 2002/02/02. First Use In Commerce:
2002/02/02.

Filing Date

2001/12/05

Examining Attorney

AYALA, LOURDES

Print: Jun 30, 2006

76344977

Attorney of Record
PAUL H KOCHANSKI





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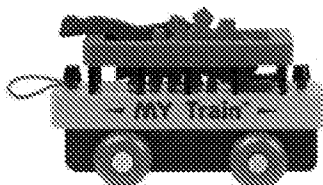


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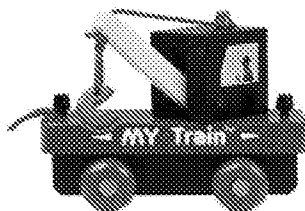


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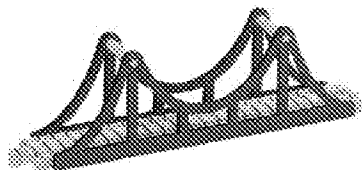


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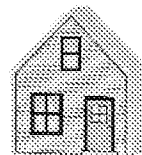
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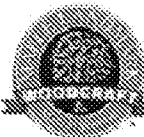
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Woodcraft
WOODEN RAILWAY SYSTEM



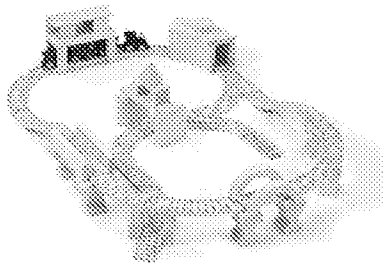
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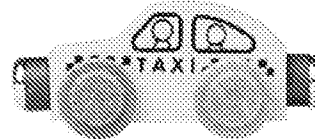


[animal accessory train cars](#)



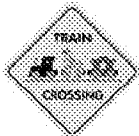
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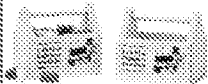


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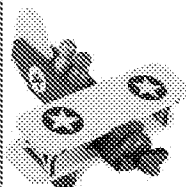


[circus train railway](#)



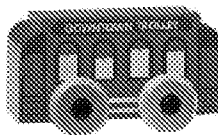
[toy vehicles](#)

[montgomery schenck classics](#)

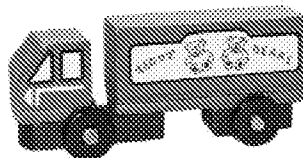


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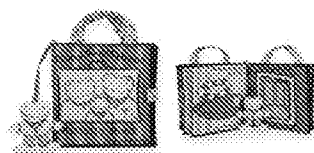


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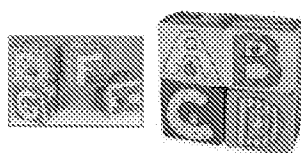
games

soft activity books



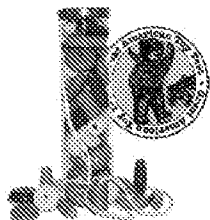
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flip blocks



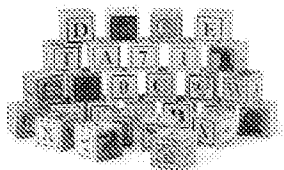
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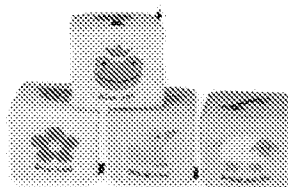
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soft blocks

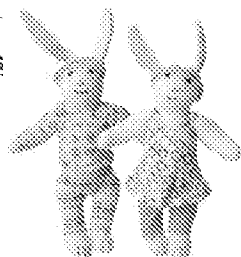


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stuffed animals

sleepies

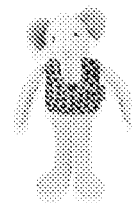
botties



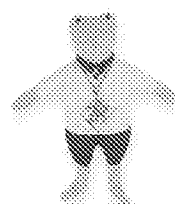
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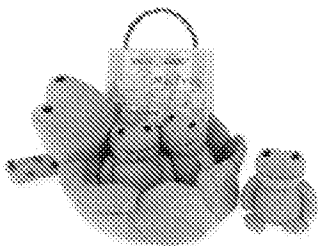
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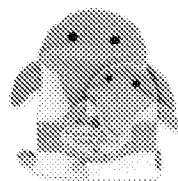
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bath toys

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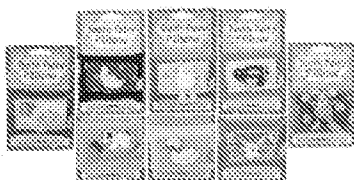
miscellaneous fun stuff

fluffy flashlight



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tooth fairy pillows and boxes



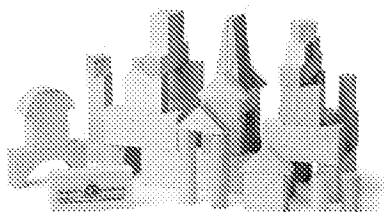
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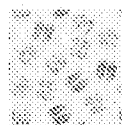
i play non-disposable swim diapers for girls



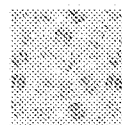
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Swimwear - Bathing Suit - Your baby will be the talk of the beach this summer in this original re-usable i play (R) Swim Diaper! i Play's new design Swim Diapers now have a lightly absorbent inside layer with a snug-fitting, waterproof Poly Lycra (R) outside layer. This multi-use Swim Diaper is designed to be worn alone, but can be worn over a disposable diaper. i Play is the original Swim Diaper manufacturer, and with over 16 years experience, making, testing and improving their Swim Diaper, they feel it is the best. Twenty-seven states now require or encourage approved swim diapers for diaper-aged children swimming in public pools. Properly fitting Swim Diapers help prevent messy pool accidents and can reduce the risk of spreading dangerous water-borne illnesses. PLEASE NOTE: we don't recommend putting these swimsuits in the dryer.

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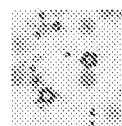
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lime flo flaps



pink kiku



yellow kiku



aqua
flamingos



pink hand ton

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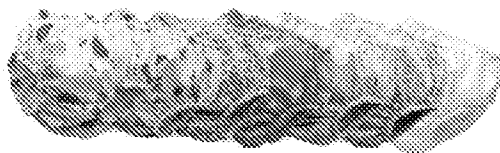
Size [Small \(0-6mth\)](#)

price \$9.79

NOTE: DO NOT
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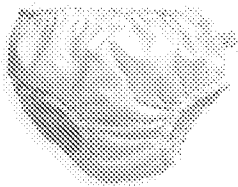
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Size	Weight	Age
S	15-18 lbs	6 mos
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L	22-25 lbs	18 mos
XL	25-30 lbs	2 yrs
XXL	30-37 lbs	3 yrs

i play white non-disposable
swim diapers

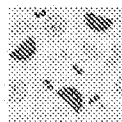


Size [0-6mths](#)

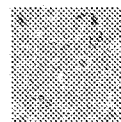
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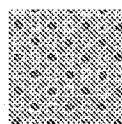
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are limited



[yellow fresh fruit](#)



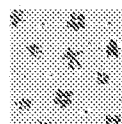
[aqua beach girls](#)



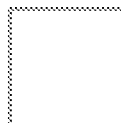
[pink cactus
garden](#)



[lime
watercolor tulle](#)



[lime tiki](#)



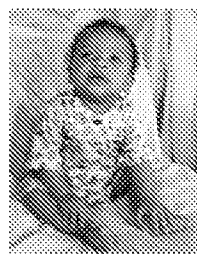
[white solids](#)

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i play Swim Diapers



Availability: Usually ships the same business day.

iplay swim **\$10.00**

Size:

Print:

Add Matching Hat?: Quantity:

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i play® swim diapers are available in fashionable prints for infants and toddlers. Suits available are from the "Fun Prints" collection, shown above. These bright and vibrant designs are great for the pool and beach.

Matching hats are brim hats in matching prints for girls, sun hats with back flap for boys. Photos coming soon.

Girl's designs feature an adorable ruffle trim on the back.

Give us a call for availability if you require a particular print.

You might also be interested in:



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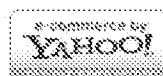
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i play Sunhat
\$10.00



i play Flexi-Specs
\$7.95

i play Brim Hat
\$10.00

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Baby Toys and Books

They make great toys for babies these days, don't they? For safe, natural and durable toys, consider a wooden toy from German companies [Haba](#) or [Selecta Toys](#). For an organic cotton plush toy, consider a [toy from Under the Nile](#). And for an elegant baby gift that will be a family keepsake, consider a [BabyChime sterling silver rattle](#). Our most popular toys are the [vegetable or baby buddy teething toys](#) from Under the Nile, the [Haba Fidella soft flower rattle](#), and the [Oball](#) from [Rhino Toys](#).

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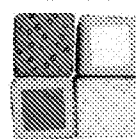
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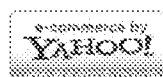


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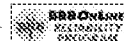
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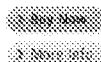


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










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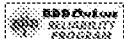
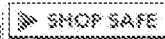
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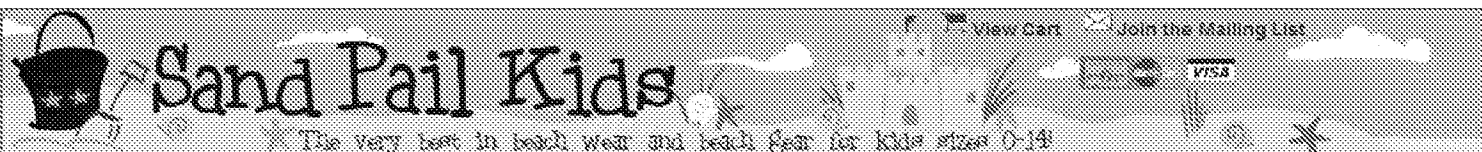
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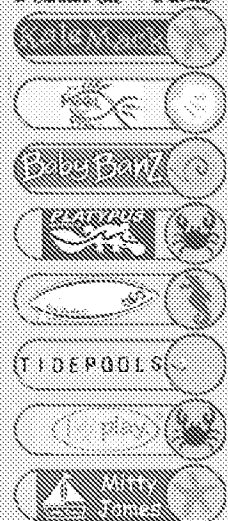


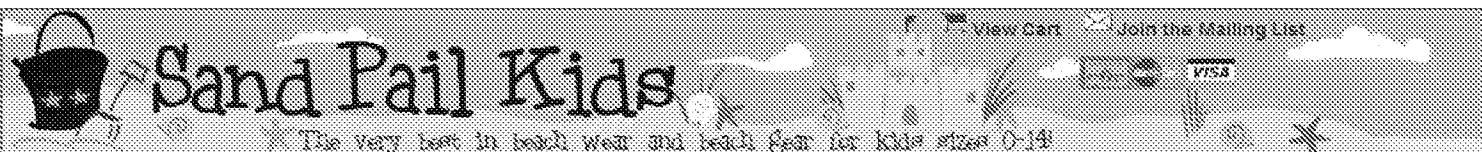
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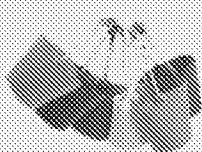
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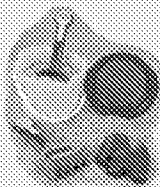
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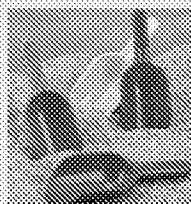
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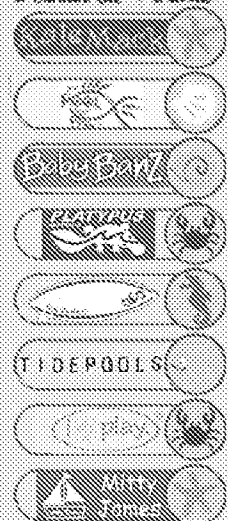


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03	3367	N/A	0	0	0:02	010525[DC] not dead[lid]
04	4305	N/A	0	0	0:03	260126[DC] not dead[lid]
05	84	0	55	66	0:01	1 and (2 or 3 or 4)
06	67	0	3	67	0:01	2 and (3 or 4)
07	1502	N/A	0	0	0:02	1 and "025"[cc]
08	1103	N/A	0	0	0:02	1 and ("025" or "035" or a or b or 200)[ic]
09	4921	N/A	0	0	0:02	*play*[bi,ti] not dead[lid]
10	1379	N/A	0	0	0:02	9 and "025"[cc]
11	1033	N/A	0	0	0:02	9 and ("025" or "035" or a or b or 200)[ic]
12	2870	N/A	0	0	0:03	play[bi,ti] not dead[lid]
13	742	N/A	0	0	0:02	12 and "025"[cc]
14	557	N/A	0	0	0:02	12 and ("025" or "035" or a or b or 200)[ic]
15	1608	N/A	0	0	0:01	(3 or 4) and ("025" or "035" or a or b or 200)[ic]

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MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
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STATE	North Carolina
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COUNTRY	United States
AUTHORIZED EMAIL COMMUNICATION	No
LEGAL ENTITY SECTION	
TYPE	CORPORATION
STATE/COUNTRY OF INCORPORATION	North Carolina
GOODS AND/OR SERVICES SECTION	
INTERNATIONAL CLASS	025
DESCRIPTION	children's and infants' cloth bibs; children's headwear; infantwear; non-disposable swim diapers
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 02/08/1996
FIRST USE IN COMMERCE DATE	At least as early as 02/08/1996
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT4\IMAGEOUT4 \\787\914\78791467\xml2\AP P0003.JPG
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	\\TICRS\EXPORT4\IMAGEOUT4 \\787\914\78791467\xml2\AP P0005.JPG
	\\TICRS\EXPORT4\IMAGEOUT4 \\787\914\78791467\xml2\AP P0006.JPG
SPECIMEN DESCRIPTION	digital photographs of product packaging and labels
ADDITIONAL STATEMENTS SECTION	
PRIOR REGISTRATION(S)	Applicant claims ownership of U.S. Registration Number(s) 2115786.
	This application for registration is in part to replace applicant's

MISCELLANEOUS STATEMENT	<p>acceptable Section 8 Declaration. A combined Sections 8 and 15 Declaration was executed by registrant and timely filed in Reg. No. 2,115,786 by registrant's previous attorney George J. Netter on August 15, 2003. However, in a Post Registration Office Action mailed November 18, 2003, the combined Declaration was refused, and no response was filed within the six-month period for response, which elapsed May 18, 2004. No communication was sent to registrant, who assumed that Reg. No. 2,115,786 was being maintained. It is now known that registrant's prior attorney George J. Netter, believed to have been a sole practitioner, died at some point. It is assumed he was ill and not attending to his practice during the relevant period ending May 18, 2004. More recently, registrant, through numerous telephone messages left on a telephone answering machine at Mr. Netter's office, diligently worked to retrieve registrant's files. Those files were recently sent to registrant, and the unintended lapse of the registration noted. There was no intention to abandon the prior registration, and the mark has been in continuous use.</p>
SIGNATURE SECTION	
SIGNATORY FILE	\\TICRS\EXPORT4\IMAGEOUT4\787\914\78791467\xml2\AP P0007.JPG
SIGNATORY NAME	Becky Cannon
SIGNATORY POSITION	President
PAYMENT SECTION	
NUMBER OF CLASSES	1
NUMBER OF CLASSES PAID	1
SUBTOTAL AMOUNT	325
TOTAL AMOUNT	325
PAYMENT METHOD	CC
ATTORNEY	
NAME	Steven C. Schnedler
FIRM NAME	Carter Schnedler & Monteith, P.A.
STREET	P.O. Box 2985
CITY	Asheville
STATE	North Carolina
ZIP/POSTAL CODE	28802
COUNTRY	United States
PHONE	(828) 252-6225
FAX	(828) 252-6316
EMAIL	schnedler@ashevillepatent.com
AUTHORIZED EMAIL COMMUNICATION	No
ATTORNEY DOCKET NUMBER	IPLAY-2
OTHER APPOINTED ATTORNEY(S)	David M. Carter and J. Derel Monteith, Jr.
CORRESPONDENCE SECTION	
NAME	Steven C. Schnedler
FIRM NAME	Carter Schnedler & Monteith, P.A.
STREET	P.O. Box 2985
CITY	Asheville

The applicant hereby appoints Steven C. Schnedler and David M. Carter and J. Derel Monteith, Jr. of Carter Schnedler & Monteith, P.A., P.O. Box 2985, Asheville, North Carolina, United States, 28802 to submit this application on behalf of the applicant. The attorney docket/reference number is IPLAY-2.

A fee payment in the amount of \$325 will be submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature:

Signatory's Name: Becky Cannon

Signatory's Position: President

Signatory's Signature: Signature

Mailing Address:

Steven C. Schnedler

P.O. Box 2985

Asheville, North Carolina 28802

RAM Sale Number: 248

RAM Accounting Date: 01/17/2006

Serial Number: 78791467

Internet Transmission Date: Fri Jan 13 15:52:20 EST 2006

TEAS Stamp: USPTO/BAS-7014474145-2006011315522039587

6-78791467-2002b1c235cb35ac4bda274101cd5

b8b230-CC-248-20060113154827308267

I PLAY.



i play
Long wear

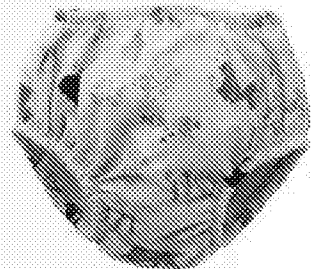
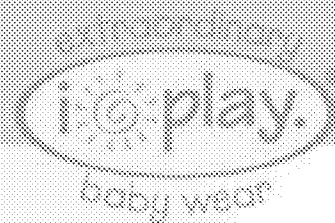


Swim Diaper

Large
22-25 lbs (10-11.5 kg)

- Swim Diapers that really work
- A swimsuit and trim-fitting diaper in one, or can be worn over a disposable
- Fun prints that coordinate with other i play.® Swimwear

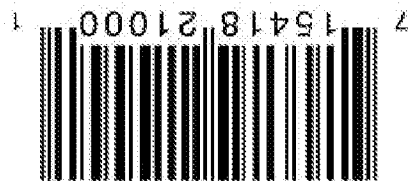




Swim Diaper

Small
13-18 lbs (6-8 kg)

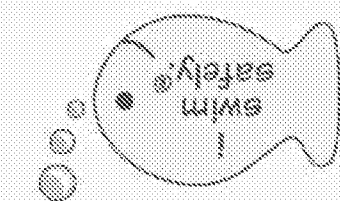
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Made in China Item #21000

Schwimmwindel
Wasserdichtes Material, auslaufsicher
Angenehm und gute Passform
KEINE ZUSÄTZLICHE WINDELNOTWENDIG
Zweifach
Wasserdichtes Material
Hautfreundlich
Garn anders für mehr nützige

For healthy swimming tips visit the
Centers for Disease
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Web site at
www.healthyswimming.org



size	age months	weight lbs	weight kg
S	6 mo.	13-18	6-8
M	12 mo.	18-22	8-10
L	18 mo.	22-25	10-11.5
XL	2 yr.	25-30	11.5-13.5
XXL	3 yr.	30-37	13.5-17
4T	4 yr.	37-46	17-21

Couche-culotte de natation
Nœud imperméable
Ajusté et confortable
PAS D'AUTRE CÔTECHÉ CILLOTTE NÉCESSAIRE
Pañal de nadar
Núcleo impermeable
Ajustado

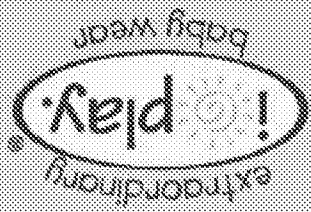
Swim Diaper

Keeping babies happy for over 20 years.

Keep packaging
out of reach
of children.
RN#91430



According to public health
departments, Swim Diapers that
really work are:
• Snug fitting around the legs and waist to
contain solid matter
• Made from waterproof material to
prevent leakage
Why does your baby need an
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i play.® approved Swim Diapers help prevent
messy pool accidents because they meet the
above standards
• 27 states encourage the use of approved
Swim Diapers in public pools
www.ipplaybabywear.com



Flip Pocket

catches more mess

94°C

1/8"

12-24 months

Stage 4

extraordinary

play.

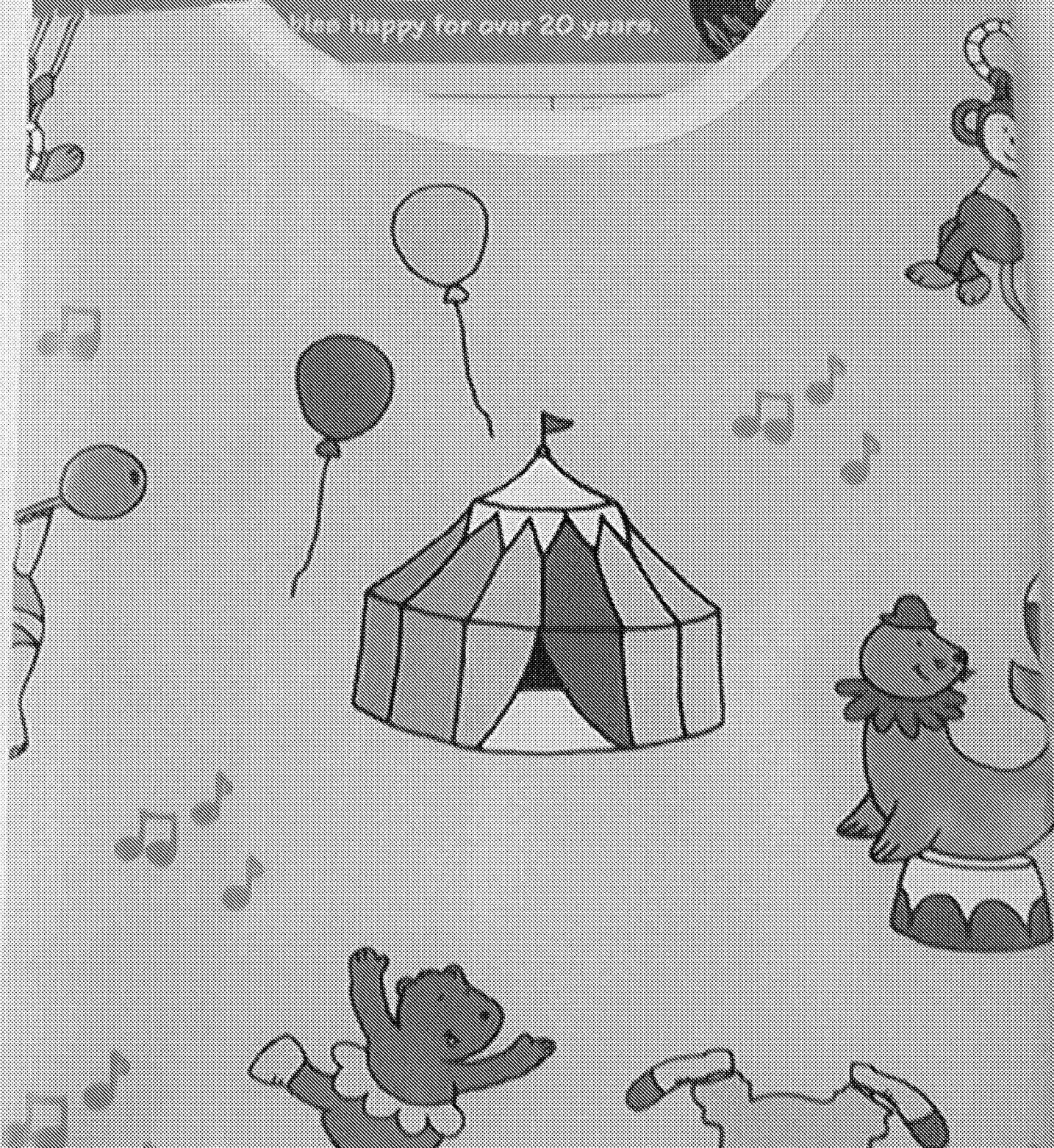
baby wool

Super Duper Bib

- Waterproof
- Easy care and durable
- Developmental designs



ables happy for over 20 years.



Waterproof Bib 3 Pack



6-12 months

Stage 3



Wash 'N Wipe Bib

- Flip Pocket catches more mess
- Waterproof
- Easy care
- Lightweight and comfortable



i play.® Keeping babies happy for over 20 years.

Stage	Ages	What Happens	Bibs Needed
Stage 1	Birth-2 months	Milk, drops, leaks	Absorbent, small, simple, basic
Stage 2	3-6 months	Teething, lots of drooling, lots of drool, spit-up	Absorbent, lots of bibs, cute, sweet
Stage 3	6-12 months	Solid foods with a spoon, controlled mess, chewing, exploring	Waterproof backing, pullover bibs, easy on and off, bright colors
Stage 4	12-24 months	Self-feeding, exploring, very messy	Easy to wipe and clean, waterproof, more coverage, fun colors, developmental designs

EVA Material

Matière EVA

Tejido EVA

EVA Material

EVA 生地

www.iplaybabywear.com

Made in China

Trademark/Service Mark Application, Principal Register

believed to have been a sole practitioner, died at some point. It is assumed he was ill and not attending to his practice during the relevant period ending May 18, 2004. More recently, registrant, through numerous telephone messages left on a telephone answering machine at Mr. Netter's office, diligently worked to retrieve registrant's files. Those files were recently sent to registrant, and the unintended lapse of the registration noted. There was no intention to abandon the prior registration, and the mark has been in continuous use.

The applicant hereby appoints Steven C. Schnedler and David M. Carter and J. Derel Monteith, Jr. of Carter Schnedler & Monteith, P.A.P.O. Box 2985, Asheville, North Carolina, United States, 28802 to submit this application on behalf of the applicant. The attorney docket/reference number is IPLAY-2.

A fee payment in the amount of \$325 will be submitted with the application, representing payment for 1 class(es).

APPLICANT NAME: Family Clubhouse, Incorporated d/b/a i play
MARK: (standard characters)

Declaration

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Signature: Becky Cannon Date: January 13, 2006

Signatory's Name: Becky Cannon

Signatory's Position: President

[Go Back](#)

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Long wear

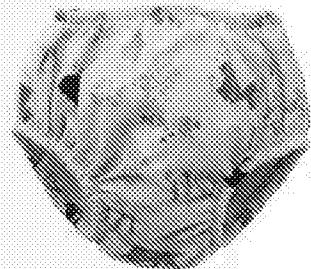
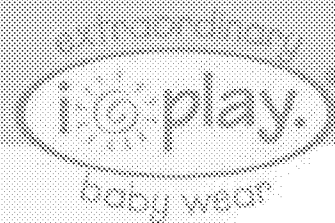


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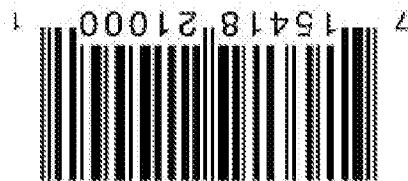




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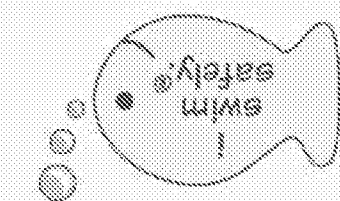
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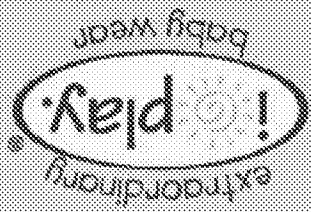
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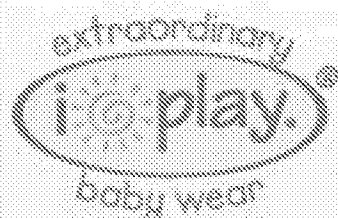


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